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TOWARD IMPROVING THE ENVIRONMENTAL ASSESSMENT PROGRAM IN ONTARIO

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Ontario

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Dear Sir/Madam:

The citizens of Ontario have expressed a deep concern for environmental quality, particularly in the past decade. One way this has been conveyed is through participation in proceedings under the Environmental Assessment Act.

The Act became law in 1976. Over the years since then, many Ontarians - both proponents of projects with potentially significant environmental effects and people concerned about those projects have found that the implementation of the sound principles of the Act has often been difficult and time-consuming. Increasingly in recent years, many people have asked three questions about the Environmental Assessment process in Ontario:

- Is it effective?
- Is it fair?
- Is it efficient?

In 1988, the previous government began the Environmental Program Improvement Project (EAPIP), with the aim of finding answers to those questions as well as ways to make the Act work better for all concerned.

In October 1989, an EAPIP task force was formed by the Ministry of the Environment. For advice, it consulted with a 26-member Public Advisory Group, consisting of representatives of non-governmental organizations.

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The result was this paper, ***Toward Improving the Environmental Assessment Program in Ontario***. This report was produced under the leadership of the previous government. I am committed to proceeding as promptly as possible to improve the environmental assessment process and, therefore, I am releasing the report for public review.

I commend those both inside and outside the Ministry of the Environment who worked so hard on the report.

One area not addressed in the paper, but mentioned in the Environmental Assessment Board's recently released paper entitled "*The Hearing Process: Discussion Papers on Procedural and Legislative Change*", relates to the setting of timeframes for Environmental Assessment Board hearings. I believe this is an issue worthy of broader discussion and would invite your comments on this matter. In addition, I am interested in how the report treats the issue of Class environmental assessments, particularly their legal status and definition.

Another concern I have with the report relates to the application of the Environmental Assessment Act to the private sector. I believe that it is necessary to think more in terms of how the Act should be more regularly and broadly applied to the private sector, rather than simply whether it should be.

The original intent of the Environmental Assessment Act was that it be applied to the private sector. Almost 15 years after the Act's promulgation, I believe it is time to find workable methods to do just that. In this regard, I will be announcing in the near future the establishment of a task force to address the specific issue of how the Act should be applied to the private sector. But I would also welcome your comments at this stage on how the Act can be applied to the private sector.

On November 21, 1990, I announced in the Legislature my plan for dealing with the solid waste management situation in Ontario. An important part of

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that plan was the absolute necessity to improve the environmental assessment process, so that the frustrations with the current process, often experienced by all parties - whether proponents or citizen intervenors - are dealt with. I announced at that time that I would be releasing this discussion paper, so that we could get on with the job of hearing the public's reaction to it and using that feedback to draft any needed amendments to the Environmental Assessment Act and improve the procedures used in implementing the Act. We need to move quickly, but not so quickly that we miss opportunities to get the best possible amendments and most efficient procedures. My hope is that there will be a revised Act given final passage by the Legislature by the end of 1991 and a new set of processes and procedures for effective implementation of the Act by that time.

I am referring this paper to my Environmental Assessment Advisory Committee, which will be conducting the public consultation on the report. Public meetings will take place early in 1991. I encourage you to write to the Committee or attend one of its public meetings. Enclosed is a notice from the Committee on its public consultation process.

Thank you for your interest in Environmental Assessment in Ontario. This government is committed to making the EA process work well. Your feedback on this report will greatly assist us in this task.

Yours sincerely,

Ruth Grier
Minister

Enclosures

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EXECUTIVE SUMMARY

The purpose of *Environmental Assessment Act* (EA Act) is to ensure that environmental factors are taken into account from the earliest stages of planning an undertaking. Fourteen years of experience has shown the Act to be a valuable instrument; however, concerns about the operation of the EA program need to be addressed.

This discussion paper makes recommendations to improve the effectiveness and efficiency of the EA process in Ontario. The roles and responsibilities of proponents, government reviewers, EA coordinators of the government review process, the EA Branch, and the public are more clearly defined, and criteria have been developed to assist in decision-making. Time limits have been proposed for review and decision processes.

It is recommended that a planning and consultation (PAC) phase become mandatory. The EA process would begin with a mandatory notice explaining the purpose of the undertaking and scheduling an initial public session. The proponent would present a draft Assessment Design Document (ADD) to contain particulars of the undertaking including the alternatives to be considered, consultation plans, and preliminary lists of issues and studies. The ADD would be finalized after the public session and filed with the EA Branch for comment. No formal approval would be given. Upon request, a scoping session to consider issues of concern would be held by the EA Board to decide whether the ADD was a satisfactory guide to preparation of the EA document. The Board's decision would be binding on the subsequent review and acceptance and approval phases.

Upon submission of the EA, the proponent would notify the public, and public and government reviews would then proceed concurrently. The current authority of the Minister to accept the EA document would be expanded to include a provision to refuse acceptance of the EA document. Responsibility for making the decision on acceptance or refusal of the EA would be delegated to the EA Branch Director with allowance for an appeal to the EA Board by the proponent if a refusal is received. The Minister would retain the decision on approval of the undertaking and on requests for hearings to consider approval but no approval decision could be made or hearing held until an acceptance decision had been received.

Insufficient attention has been paid to monitoring the results of EA decisions. Monitoring has importance in determining compliance with approval conditions, enforcing requirements, and in studying environmental effects. It is recommended that proponents be required to report on their compliance activities.

Changes proposed to the individual EA process would improve opportunities for public consultation and encourage adherence to time limits on procedures. The period from EA submission to undertaking approval would be expected to be reduced from over two years currently to about seven months, if a hearing is not required. It is recommended that preparation for hearings may start as soon as the EA is submitted, and that scoping powers be given to the Minister and to the EA Board concerning

matters to be heard at a hearing. The paper also recommends that the EA Board revise its Rules of Practice and Procedure to improve the hearing process.

Recommendations are provided to establish the status of class EAs under the Act, to define the characteristics of projects to be included under class EAs, to establish a process and schedules for review of parent class EAs, and to develop a model parent class EA guideline to encourage more uniformity in procedures. A public consultation process is recommended with mandatory public notices. Use of a provision for bumping-up a project under a class EA to an individual EA would be established and a guideline issued to facilitate its use.

The procedure to exempt public sector projects from the Act is criticized for its uncertainty and limited opportunities for public involvement. An initial notice from the proponent to the Ministry and public concerned is recommended. The Minister would have 120 days to respond to the formal exemption request. The use of a compliance order is recommended for projects for which conditions are established. The current procedure for designating major private undertakings under the Act is clarified and criteria given to help identify projects for designation. The Minister would have 120 days to respond to a request for designation.

The application of EA beyond the present program is also addressed. The Government of Canada applies the Environmental Assessment and Review Process (EARP) to projects under the jurisdiction of federal departments, boards and agencies. Possibilities exist for EARP to apply to areas of the public and private sectors in Ontario. Recent court decisions may lead to more proposals being subject to the public hearings process of EARP than in the past. It is recommended that federal/provincial mechanisms be developed for the holding of joint hearings.

It is suggested that the government continue to provide for public consultation, consideration of alternatives, and consideration of impact on the natural environment in a more formalized manner when ministries are developing applicable policies and programs to be approved by Cabinet.

Few private sector undertakings have so far been made subject to the EA Act but, an increase can be expected due to the recent designation of private energy from waste facilities. A continuing strategy for the designation of waste management activities is recommended. The designation of certain types of power generation facilities is also recommended.

The paper outlines a number of problems associated with extending the application of the Act to the private sector and recognizes the existence of a number of other statutes that address private sector projects. In briefly examining a number of options available to further extend the application of the Act, the paper concludes that this issue be explored in detail by a joint industry-government task force.

After all interested parties including the public have had the opportunity to review the recommendations contained in this report and to make their views known to the Environmental Assessment Advisory Committee, it is expected that the Committee will make a report to the Minister. After consideration of all recommendations, appropriate statutory amendments will be introduced to the Legislative Assembly and the necessary regulations, policies and guidelines will be developed in consultation with all interested parties.

CHAPTER 1

INTRODUCTION

Greater attention is being given to both the environment and the concept of sustainable development resulting in an increasing need to have environmental considerations taken into account in decision-making processes. The EA Act has an important role to play in this growing need and must be an effective and efficient tool. This review of the EA Act and program arises from concerns expressed during 14 years of implementation and the need to examine future application of environmental considerations in sustainable economic development.

This paper is based on the premise that the Act, and its underlying principles of public consultation, broad definition of the environment, analysis of alternatives and consideration of environmental effects provides for a comprehensive, effective and environmentally sensitive decision-making tool. The paper sets out the Government of Ontario's proposals regarding changes to the Act and its process. The paper recommends specific changes to the Act and the EA program to increase effectiveness and to make the application of the Act more efficient. The paper also examines the application of the Act, or its key principles, beyond its current use.

The release of this paper for public review is the last major step in an extensive consultation process. Consultation has taken place with government agencies, environmental and other affected non-government groups to ensure that the respective views of these groups were taken into account during the review period. The paper was prepared by an Environmental Assessment Task Force set up by the Ministry of the Environment (Ministry) in 1989 and the Environmental Assessment Program Improvement Project (EAPIP) work that preceded it. Submissions were received from many groups during the EAPIP review and were used to develop six working papers that set out options related to the EA program. This paper combines the more general recommendations that were set out in Phase 1 of the review of the Act into comprehensive Phase 2 recommendations.

The purpose of releasing this paper for public review, therefore, is to receive comments on the specific recommendations and overall approach taken in the proposed revisions to the Act and its application and to receive comment on the application of the Act beyond its current use. These comments will form an integral part in finalizing the recommendations for amendments of the Act, improvements in delivery of the EA program, and shaping direction beyond the current program.

THE GOAL OF ENVIRONMENTAL ASSESSMENT

The goal of EA is to assure that, from the earliest stages of consideration and planning of undertakings, decisions will be made only after taking environmental considerations

into account. The goal would be expected to apply broadly to public and private sector undertakings including policies and plans, the intention when the government first put forward the EA concept.

The goal of EA is seen as consistent with the mission statement of the Ministry of the Environment; "To protect and enhance the quality of the environment for the present and future well-being of the people of Ontario and of the ecosystem in which they live." It is in keeping with two Ministry management objectives that the Ministry will: "anticipate and prevent potential environmental problems before they occur," and also "shape governmental, institutional and individual decisions and values to achieve responsible use of the environment."

The World Commission on Environment and Development (the Brundtland Commission) released a report, *Our Common Future*, in 1987, which called upon governments to undertake fundamental institutional and legal change in recognition that economic and ecological systems are interlinked world-wide. The report stressed that should governments continue to ignore this reality, there is doubt whether the planet will be able to support human and economic growth as well as change far into the next century.

Later in 1987, Canada responded to the Brundtland Commission with the report of the National Task Force on Environment and Economy, endorsed by all Provinces, which concluded that:

> ***"Governments and industry have reacted to correct many of the problems created by past mismanagement of the environment. Sustainable economic development calls for a different approach. It would minimize environmental impact and future clean-up costs by advanced and integrated planning. In a phrase, the remedial, reactive approach would be replaced by 'anticipate and prevent' as the dominant concept underlying environment-economy integration. The political and economic structures of Canada and the world are awakening to the need to make economic development sustainable. Decision-making has not yet adapted to fulfil this need. Change is necessary, and it must occur now."***

The goal of environmental assessment, therefore, is seen to be consistent with the thrusts of the Brundtland Commission and the National Task Force reports.

ORIGINS OF THE EA ACT

Prior to the EA Act, environmental legislation was directed towards the control of individual sources of water and air pollution. By the 1970's, Ontario had established programs under the *Environmental Protection* (EP) and *Ontario Water Resources* (OWR) *Act* to abate pollution from existing discharges and emissions and through use of an

approval process to prevent pollution from new industrial and commercial developments and public works.

As increasing thought was given to preventive and restorative efforts, it was realized that more attention should be paid to siting implications and to secondary, cumulative, and off-site environmental effects resulting from discharges.

Thus a case could be made that certain major projects and technical developments with significant environmental effects should be subject to an asses nent process of review and approval, more comprehensive than was the practice under the EP Act, with explicit provision for public input.

Other issues coming to the fore in the 1970's concerned the coordination of policy development among Ontario ministries and the importance of an adequate information base to guide cabinet decisions. The concern of government was that many government decisions were being made without consideration for environmental matters or considering them only superficially.

In 1973, the government published a *Green Paper on Environmental Assessment* which described some options for an environmental assessment process. The process would have provided a means to look comprehensively at environmental issues and provide information to ensure that potentially significant environmental effects were given due weight, alongside economic and social factors, in decisions at Cabinet.

Legislation drafted in 1975 proposed a system under which designated undertakings in the public and private sectors would be subject to an environmental assessment act. The assessment on the undertaking would take the form of a review and approval procedure concerned with biophysical effects on the environment. A decision on approval would be made within the Ministry and contribute to a final Cabinet decision.

After first reading of the bill to create such an act, concerns expressed by public interest groups and within government led to amendments which changed several important features. All public sector projects were made subject unless exempted by regulation. The definition of environment was broadened beyond the biophysical concept to include "the social, economic and cultural conditions that influence the life of man or a community". The Minister of the Environment or a board were to be given authority to weigh various public interests against each other, and also to make the decision on approval of the undertaking. In the Green Paper, that role had been seen as a Cabinet responsibility.

The EA Act was proclaimed in part in 1976 and at first applied only to public sector undertakings. In 1977, the Private Sector section of the Act came into force. Major private undertakings could then be designated by regulation as subject to the Act.

EXPERIENCE WITH THE ENVIRONMENTAL ASSESSMENT ACT AND PROGRAM

The EA Act sets out the elements of a planning process for an individual project or undertaking. The Act requires that an EA document be submitted to the Minister explaining the planning process followed and decisions made to select the preferred undertaking from the various alternatives. The document is reviewed and, if accepted, the Minister makes the decision on approval of the undertaking. Clause 1(c), of the Act requires a broad interpretation of the environment to include, "the social economic and cultural conditions that influence the life of man or a community". Subsection 5(3) requires proponents to follow certain formalities in planning and decision procedures in respect to the purpose and rationale for undertakings and the consideration of alternatives.

Some perceive that certain of the legislative requirements have attracted enough attention to become seen as ends in themselves. Other concerns such as inadequate public consultation have become priorities because of the absence of explicit provisions in the Act. The EA program has been criticized for its inefficiency, especially as regards the cost, complexity, and inconsistency of its often time-consuming procedures. These criticisms have been a deterrent to its wider application, which in turn has been a sign of reduced effectiveness in its protection of the environment.

The relationship of the EA Act to other statutes is sometimes unclear and there are criticisms of overlapping authority with other legislation. Application to the private sector has so far been limited. Many important public developments with potential environmental effects have been exempted from the Act. Application to government plans or programs, although provided for in the Act, has not been put into practice. The most frequent application of EA through the class EA procedure is not explicitly provided for under the Act.

The review and approval process required by the Act is often seen to be inefficient. There is concern that the cost of carrying out the EA program by all parties, in terms of dollars and resources, is unreasonably high and processing times are too lengthy and uncertain. Decisions on the exemption or designation of undertakings may also be lengthy and uncertain in timing. The review and approval process applied to individual projects often comes into play late, after many decision related to the project have been finalized. At that time most proponents will have made critical decisions outside the formal process and are disconcerted when called to reconsider them. Complexities in the EA review process are also seen as contributing to inefficiency. Certain requirements e.g., alternatives to be considered, have often been difficult to interpret.

An obstacle to obtaining information on physical benefits from the EA Act lies in the matter that, even after fourteen years, no comprehensive formal program of monitoring has been successfully established to ensure compliance with conditions of approval and to obtain knowledge of effects of undertakings.

Public involvement in the EA process has been encouraged through the Ministry's *Guideline on Pre-Submission Consultation, 1983*. The only statutory information requirements for public involvement are in reference to the provision of several public notices. In the absence of a formal provision for an initial planning and public consultation stage, participants disagree over the need for, degree of, and techniques for involvement of the public and inconsistencies are prevalent.

BENEFITS FROM THE EA ACT AND PROGRAM

Despite the problems encountered, the EA program has made considerable progress towards the goal of introducing environmental concerns into the planning and decisions concerning undertakings.

- Proponents have improved their planning and decision-making practices and procedures.
- A forum for discussion and public involvement has been provided and encouraged.
- Proponents are encouraged to consider a comprehensive range of alternatives in planning an undertaking and use a broad definition of the environment, thus encouraging broader thinking and innovative approaches to problems and opportunities and providing a sound basis for evaluating proposals.
- Accountability of all parties involved in decision-making is better defined.
- A vehicle is provided for the articulation, implementation and coordination of government policies, and for the comprehensive review of development issues.

There is evidence that the Act is providing a useful process for reaching decisions on contentious undertakings. It is notable that Ontario Hydro and the Ministries of Transportation and Natural Resources acknowledge that they have, in part, integrated their own planning processes with the EA process and thereby improved certainty and timing in their operations. Increased public involvement has facilitated consideration of the social impacts of their proposals. About twenty private sector proponents have requested that their waste management undertakings, mostly with controversial aspects, be designated under the Act.

Also, through the EA program including the hearings process, the government has been able to demonstrate and to confirm its support for the use of public consultation in arriving at solutions to environmental issues. In northern unorganized territory,

native groups have seen benefits in the Act as a means for them to gain an even greater ability to participate in the planning of resource developments.

The benefits cited above, however, can be seen to be concerned largely with the advantageous use of the EA process, with no reference to direct environmental benefits. In fact the latter are recognized as very difficult to identify clearly, since EA involves a proactive as opposed to a reactive approach to environmental protection. The consequence is that benefits will not be explicit, but rather to be expected in the intangible form of an absence of adverse effects which might have otherwise occurred.

PRINCIPLES

In comprehensively reviewing both the benefits and problems associated with the Act, the Ministry concluded that the Act and its underlying principles were sound, but a number of changes were required to resolve the concerns being expressed about the Act and its implementation.

When compared against other environmental assessment models, used in other jurisdictions, the Ontario environmental assessment model generally provides for an effective and environmentally sensitive decision-making tool, which is embodied in legislation. The legislation establishes a very broad definition of the environment, including not only natural environmental impacts but also social and economic. The Ontario model sets out a decision-making process requiring the analysis of alternatives and provides for specific assessment and mitigation of environmental concerns for any undertaking subject to the Act. It provides for public hearings to address and decide upon environmental issues and provides for intervenor funding for all parties involved in the hearings process. A hearing under the Act can be linked with other statutory hearings through the *Consolidated Hearings Act* (CH Act), which provides for a single consolidated hearing. The model provides for a comprehensive technical analysis related to the technical acceptance of documentation required by the Act and a second stage analysis regarding the approval of an undertaking. It is comprehensively applied to public sector undertakings and can be utilized for private sector undertakings, as well. The fourteen years of experience now gained with the Act has shown the effectiveness of the Act in many situations. This implies that the underlying strength of the Act be retained and made more effective. In attempting to retain the strengths of the Act, while resolving the problems associated with it, the following principles were used and provide the basis for the recommendations contained in this paper.

1) **Shared responsibility.** This principle is based on the assumption that the Environmental Assessment program is a program of the Ontario Government and not just that of the Ministry of the Environment. While the Ministry of the Environment has the lead responsibility in terms of implementation, all govern

ment agencies that are subject to the Act have a role to play in its effective implementation. A similar role is shared by the public and other affected interest groups. Shared responsibility requires each participant to have a defined role and to be accountable for discharging the role responsibly.

2) **Effective application of Act.** This principle focuses on the requirement that the EA process and its implementation be as clear as possible. A clear understanding of all phases of the process is required for all participants. The Ministry must take the lead role in ensuring that the process is not only clear, but that Ministry direction concerning participants involvement in the process is available and consistent.

3) **Consultation.** The need for effective consultation and a well-defined program of consultation throughout the environmental assessment process is fundamental. This principle emphasises the embodiment of public consultation in the initial planning stages of an environmental assessment by the proponent. It implies a shared responsibility and accountability for all participants in the process, whether a proponent, public agency or public that consultation be meaningful and productive throughout the process.

4) **Effectiveness and efficiency.** This principle establishes the need to streamline the Act and its process, wherever possible. It recognizes that steps may need to be added to the process to increase the effectiveness of the Act, but that these steps be clear and as few as possible. It also addresses the need to delete ineffective or inefficient parts of the present process.

5) **Assured process.** Decision points within the process must be clear and decisions must be made within a reasonable time frame. There is a need for a process which gives assurance to all participants, whether it be the proponent, affected government agencies or the affected public.

This paper contains a number of recommendations regarding the Act and its future application in other areas. To the extent possible, the above principles are embodied in the overall approach taken in proposing the reforms set out in the paper. Chapters 2, 3, 4 and 5 set out a revised process for the Act and make recommendations concerning amendments to the Act. These four chapters deal with the entire proposed process and recommend the embodiment of two new phases within the Act, planning and consultation (PAC) and monitoring. The entire proposed EA process is shown in Appendix A. Chapter 6 discusses matters regarding the general application of the Act, with a view to clarifying and improving its application. This is followed by a chapter which discusses the potential use of the Act beyond its current application, the concerns related to the extension of its application and possible directions to be taken in this regard. The final chapter describes the conclusions of the paper.

The paper makes a number of recommendations concerning the development of policies, guidelines, regulations and legislative changes. It is recognized that consultation with affected parties must continue, to ensure that all participants in the review process provide input into the further development of these policies, guidelines and regulations.

CHAPTER 2

PLANNING AND CONSULTATION

INTRODUCTION

Consultation with affected parties has become an essential part of the planning of any undertaking under the EA Act. Consultation with government ministries, agencies, interest groups and affected public is necessary to adequately identify and address the various interests and concerns associated with producing an environmental assessment document. Consultation during EA preparation provides a mechanism for proponents to define and respond to issues and work with the parties to resolve differences before limiting decisions are made and the EA Document is submitted. The Act, however, has no legal requirement for any consultation prior to the release of the Government review of a submitted environmental assessment document. The Ministry encourages the use of public consultation by the proponent at an early stage of the planning of the undertaking, but only by way of a guideline. The lack of a legislative requirement for public consultation and the limited direction provided to proponents are concerns that need to be addressed. There is a need to provide assurance to all parties involved in the planning of any undertaking that consultation will be clear and effective.

Consultation is a systematic, interactive process in which the proponent and other interested and affected parties exchange information, raise and respond to issues, discuss alternative solutions, and attempt to resolve areas of disagreement or controversy. It is a method of establishing communication to develop better understanding among all parties. Participants have certain responsibilities in the consultative process. Proponents must be clear about the objectives of their public consultation program, how input will be addressed and when opportunities for consultation will take place. The public and other parties have an obligation to educate themselves about the central facts and issues and to make their concerns known at the earliest opportunity. Probably the most important ingredient for a successful consultation process is that all participants are prepared to work in good faith to find acceptable solutions. The benefits of effective consultation include a more comprehensive identification and assessment of concerns, mutually satisfactory resolution of issues and a more open and credible decision making process. For the EA process this translates into fewer causes for delay in the EA review, a more focused and comprehensive treatment of concerns in the EA document and a better basis for assessing EA decisions.

Under the present voluntary approach, usually referred to as Pre-Submission Consultation (PSC), many proponents have ensured that the public has been made aware of, and are involved in, their planning process. The extent and effectiveness of such consultations vary from proponent to proponent. At times the rules and objectives are unclear to both the proponent and affected parties, which often leads to confusion in

the process and unsatisfactory results for everyone involved. Initiating consultation too late in the process after key decisions are made can result in unresolved public concerns surfacing after the proponent has completed its planning and the EA document is submitted for review and approval. Trying to resolve these concerns at the government review stage has lead to serious delays in the approval process. The introduction of requirements for public consultation and the development of guidelines for effective consultation are two changes which can streamline EA reviews and result in more timely approvals.

PUBLIC CONSULTATION

Initial Public Notice and Consultations

When the EA Act applies, it is recommended that a new phase, Planning and Consultation (PAC), begin the process. From the problem or opportunity statement defined by the proponent, the proponent then proceeds to establish the purpose and general nature of the undertaking and starts to identify alternative ways to meet the purpose. At this time the undertaking is still conceptual and not specifically defined or located. It is at this point that a proponent must begin its consultation process with potentially affected government agencies and public.

Consultation with the Ministry should be initiated once the proponent determines it will proceed with the planning to address the purpose of the undertaking which is subject to the Act. The Ministry then appoints an EA coordinator at the start of the process to provide information and guidance throughout the entire EA process.

The proponent's public consultation should begin with a notice to the public after preliminary work has been completed. The provision of such a notice should be mandatory. This notice should be given early in the process once preliminary alternatives, study area(s) and potentially affected public are identified. The form and means of notice would be defined by regulation to include:

- a description of the purpose of the undertaking;
- the proposed study area;
- the name and address of the proponent contact person; and,
- the date, time and location of an opportunity for the public to obtain further information concerning the undertaking.

This regulation would also include a short list of mandatory recipients of the notice, including those in the proposed study area, the municipal clerk(s) and any other concerned public identified by the proponent. Notice to those government agencies with an interest in the undertaking would be by letter.

The notice to the government agencies that will have an interest in the proponent's undertaking initiates the consultation process between the proponent and those agencies. It is important that the interests of affected government agencies are known and addressed by the proponent in preparing its environmental assessment document. It is important that at an early stage of the Planning and Consultation phase a meeting between the proponent and all affected government agencies take place. It is also felt that review agency guidelines must be developed that clearly set out the interests of the Ministry/agency to proponents. Proponents would use these guidelines in preparing its EA document and in addressing any possible concerns that the agencies may have regarding a proposed undertaking. To this end the Ministry has initiated a pilot project to develop two review agency guidelines of this nature. It is felt that such guidelines will be necessary for all core agencies involved in the process.

Another key aspect to an effective planning and consultation phase is the degree of guidance given to the proponent when developing its planning process and preparing its EA document. There is a clear need for the preparation of generic activity (e.g., highway projects, waste facilities) guidelines that could be used by various proponents in preparing their environmental assessments. To this end, Chapter four proposes that the Ministry prepare these generic activity guidelines. These, in conjunction with the other core review agency guidelines, are seen as imperative if proponents are to be given effective advice and consistent direction at the start of and throughout the EA process.

Role of the Public

There is an increasing demand for the public to be involved in planning the laws, policies and projects that will affect their lives and the environment. Public consultation in such areas as local and regional planning, resource conservation and environmental protection has evolved steadily since the early sixties. The principle of public consultation is now integrated to various extent in many public and private decision making processes, including the EA process. Although the need for public consultation in the EA process is included in the Ministry *Guidelines for Pre-Submission Consultation* there is currently no specific requirement in the Act. Given its importance and value in the planning process and development of a good EA document, the requirement for public consultation should be included in the Act for the benefit of both public and proponents.

The public has a major role and responsibility in determining the success of a public consultation program. The extent to which they become involved, the issues they raise, and how they attempt to resolve issues all influence the effectiveness of the consultation process. Initially this requires some diligence of the parties to recognize when public interests may be affected and to take advantage of opportunities for

consultation. In order to effectively participate in such a process the public must be adequately informed. This requires the proponent to make appropriate information available and the public to use this and other sources of information to educate themselves about the specific details of the planning process and project issues. There follows a responsibility to make their views and concerns known to the proponent as soon as possible in the process. Once issues are identified there is a need for forthright efforts by the proponent and the public to be open and flexible in their respective positions and attempt to seek acceptable solutions or compromises. There also needs to be a clear understanding among the participants and the proponent about their respective roles in, and expectations of, the consultation process. The type of information required, time frames and opportunities for input and how their input will incorporated in the decision making process are key questions the public will ask. This mutual understanding is particularly important where public liaison or advisory groups are used as a primary mechanism for consultation.

It should be recognized that although consultation will not always resolve all differences there are still benefits. The involvement of the public will produce the dialogue that is the first step to recognizing and accepting different points of view and working to develop consensus. Unresolved issues and the efforts at resolution should be well documented in the EA document. The Board should take into account the extent to which all parties have contributed to the consultation process in attempting to resolve concerns.

RECOMMENDATION 2.1

AMEND THE ACT TO REQUIRE PUBLIC CONSULTATION DURING THE PLANNING AND CONSULTATION (PAC) PHASE.

RECOMMENDATION 2.2

AMEND THE ACT TO REQUIRE THAT THE PROPONENT PROVIDE AN INITIAL NOTICE TO THE PUBLIC AFTER THE PROPONENT HAS IDENTIFIED THE PURPOSE OF THE UNDERTAKING.

RECOMMENDATION 2.3

THAT A REGULATION BE DEVELOPED TO REQUIRE THE INITIAL NOTICE TO INCLUDE:

- **A DESCRIPTION OF THE PURPOSE OF THE UNDERTAKING;**
- **THE PROPOSED STUDY AREA;**
- **THE NAME AND ADDRESS OF THE PROPONENT CONTACT PERSON; AND,**
- **THE TIME, DATE AND LOCATION OF AN OPPORTUNITY FOR THE PUBLIC TO MEET WITH THE PROPONENT TO OBTAIN FURTHER INFORMATION, INCLUDING THE ABILITY TO REVIEW AN ASSESSMENT DESIGN DOCUMENT PREPARED BY THE PROPONENT.**

THE REGULATION WOULD ALSO REQUIRE THAT THE NOTICE BE GIVEN TO THOSE WITHIN THE GENERAL STUDY AREA, THE MUNICIPAL CLERK(s) AND ANY OTHER AFFECTED PUBLIC AS DETERMINED BY THE PROPONENT.

RECOMMENDATION 2.4

THAT THE NOTICE REGULATION ALSO INCLUDE A REQUIREMENT FOR NOTICE TO BE GIVEN TO AFFECTED GOVERNMENT MINISTRIES/AGENCIES BY WAY OF A LETTER AT, OR BEFORE, THE TIME OF THE PUBLIC NOTICE.

RECOMMENDATION 2.5

THAT GUIDELINES BE PREPARED FOR ALL CORE REVIEW MINISTRIES/AGENCIES INVOLVED IN THE ENVIRONMENTAL ASSESSMENT PROCESS, DETAILING MINISTRY/ AGENCY INTERESTS AND REQUIREMENTS RELATED TO ENVIRONMENTAL ASSESSMENT DOCUMENTS. THAT THESE GUIDELINES BE UNDERTAKEN BY THE MINISTRY, IN CONJUNCTION WITH OTHER CORE REVIEW MINISTRY/AGENCIES.

PREPARATION OF DRAFT ASSESSMENT DESIGN DOCUMENT AND PUBLIC MEETING

In order to ensure that public consultation begins as early in the process as possible, it should be mandatory for the proponent to meet with the interested public soon after the initial public notice has been published. In order for such a meeting to be effective, the proponent must be in a position to share basic information concerning its problem or opportunity with the public. It is felt, therefore, that the proponent should be required to prepare documentation on its planning process that can be shared with the public at the initial meeting. This documentation, to be referred to as the Assessment Design Document (ADD), would be in draft form for public review and comment.

At a minimum the ADD will include:

- a description of the purpose of the undertaking;
- the proposed study area;
- the proposed "alternatives to" and proposed "alternative methods" under consideration;
- a consultation plan detailing proposed consultation with both the public and government agencies;
- a preliminary listing of issues/concerns that will be addressed by the proponent;
- a preliminary listing of studies; and
- framework for preparing the environmental assessment document.

Although the initial notice and public meeting are to be mandatory under the Act, it is felt that a considerable degree of flexibility should be given to proponents in carrying out public consultation during the Planning and Consultation phase. The proponent should allow for public review and comment of the consultation plan as part of the initial session. To facilitate this review the Consultation Plan included in the ADD would provide the following:

- identification of affected public and government agencies;
- notice provisions, both mandatory and discretionary depending on the consultation proposed by the proponent;
- the methods of consultation to be used by the proponent including such things as type of meetings, newsletters etc.;
- opportunities for consultation with the public and a general schedule showing when these opportunities would occur in the study;
- the objectives of the consultation plan and any proposed terms of reference;
- methods of dispute resolution to be used in the planning and consultation phase; and
- any funding provisions to be provided by the proponent for use by the public.

Another element of the ADD would be the "alternatives to" (alternatives) that the proponent proposes to consider as part of its EA documentation. Some proponents have suggested that requiring an analysis of alternatives for which they have no legislative mandate or statutory authority is unreasonable. The affected public, however, often feel that a proponent should address alternatives to that are beyond the actual mandate or authority of the proponent. The problem of what constitutes a reasonable alternative has led to considerable confusion in the EA process. It is felt that the resolution of what are reasonable alternatives should follow from the purpose of the undertaking, should be functionally different and dealt with as early as possible in the Planning and Consultation phase. The guidelines should recognize the different abilities of public and private sector to address alternatives to. To provide guidance to the proponent in determining the reasonable alternatives that need to be addressed in the ADD, it is proposed that the following be considered:

- the null alternative to be always included;
- ability to meet the purpose of the undertaking;
- that all alternatives within a public sector proponent's mandate or statutory authority be included and that any other public jurisdictions', or known private sector activity(ies), that have the ability to significantly influence the problem or opportunity be included;
- that all alternatives within a private sector proponent's mission statement be included and that any public sector activity(ies) that have the ability to significantly affect the problem or opportunity be included; and
- that any "alternative to" identified by the public during planning and consultation be assessed against the above criteria, and included if applicable.

The proposed generic activity guidelines to be prepared by the Ministry for proponents should include a list of reasonable "alternatives to" for each activity. This would provide guidance to the proponent in setting out the "alternatives to" in the ADD.

The proposed ADD would be available for presentation and public review at the initial public meeting. In effect, it would propose the methods and limits to the proponent's planning process and allow the public to have input as to what that process should be. At the meeting the proponent would inform the public of their definition of the problem/opportunity, their proposed "alternatives to" and "alternative methods" to be considered, the proposed study area, the study process to be used, and the proposed consultation plan. They would identify those that were felt to be the interested members of the public and seek out any other groups or individuals that would have an interest in the EA.

RECOMMENDATION 2.6

THAT IT BE MANDATORY UNDER THE ACT FOR THE PROPONENT TO MEET WITH THE PUBLIC EARLY IN THE PLANNING AND CONSULTATION PHASE.

RECOMMENDATION 2.7

THAT THE ACT REQUIRE THE PREPARATION BY THE PROPONENT OF AN ASSESSMENT DESIGN DOCUMENT. THAT THE REGULATION PROVIDING FOR THE INITIAL PUBLIC NOTICE AND MEETING ALSO DETAIL THE ELEMENTS TO BE INCLUDED IN THE ASSESSMENT DESIGN DOCUMENT, INCLUDING:

- **THE PURPOSE OF THE UNDERTAKING;**
- **THE PROPOSED STUDY AREA;**
- **THE LISTING AND GENERAL DESCRIPTION OF "ALTERNATIVES TO" AND PROPOSED ALTERNATIVE METHODS BEING CONSIDERED;**
- **A CONSULTATION PLAN FOR THE AFFECTED PUBLIC AND GOVERNMENT AGENCIES;**
- **A PRELIMINARY LISTING OF ISSUES/CONCERNS TO BE ADDRESSED BY THE PROPONENT;**
- **A PRELIMINARY LISTING OF STUDIES TO BE CARRIED OUT BY THE PROPONENT; AND,**
- **THE FRAMEWORK TO BE FOLLOWED FOR PREPARING THE EA DOCUMENT.**

RECOMMENDATION 2.8

THE MINISTRY DEVELOP A GUIDELINE TO PROVIDE CRITERIA TO BE USED IN DETERMINING REASONABLE "ALTERNATIVES TO" TO BE ADDRESSED BY A PROPONENT INCLUDING:

- **THE NULL ALTERNATIVE TO BE ALWAYS INCLUDED;**
- **ABILITY TO MEET THE PURPOSE OF THE UNDERTAKING;**
- **THAT FOR PUBLIC SECTOR EAs, ALL ALTERNATIVES WITHIN A PUBLIC PROPONENT'S MANDATE OR STATUTORY AUTHORITY BE INCLUDED AND THAT ANY OTHER PUBLIC JURISDICTIONS', OR KNOWN PRIVATE SECTOR ACTIVITY(ies), THAT HAVE THE ABILITY TO SIGNIFICANTLY INFLUENCE THE PURPOSE OF THE UNDERTAKING;**
- **THAT FOR PRIVATE SECTOR EAs, ALL ALTERNATIVES WITHIN A PRIVATE PROPONENT'S MISSION STATEMENT BE INCLUDED AND THAT ANY PUBLIC SECTOR ACTIVITY(ies) THAT HAVE THE ABILITY TO SIGNIFICANTLY AFFECT THE PURPOSE OF THE UNDERTAKING BE INCLUDED; AND**

- THAT ANY "ALTERNATIVE TO" IDENTIFIED BY THE PUBLIC DURING PLANNING AND CONSULTATION BE ASSESSED AGAINST THE ABOVE CRITERIA, AND INCLUDED IF WARRANTED BY THESE CRITERIA.

FINALIZING THE ASSESSMENT DESIGN DOCUMENT

The intent of requiring the draft ADD at the initial public meeting is to provide for public input into the proponent's planning process that will be followed for the environmental assessment. After this initial session, the proponent must prepare the final ADD including any modifications to its issues/concerns list, study area, terms of reference, consultation plan and list of "alternatives to" as a result of public input. The proponent should provide for any subsequent input beyond the initial meeting if such is required prior to finalizing the ADD.

It is felt that the proponent should have two mechanisms available to use in finalizing the ADD. The first avenue available to the proponent would be the filing of its finalized ADD with the Environmental Assessment Branch. No approval would be given to the document, but Branch staff would review the document and provide written comment to the proponent on whether it was felt that its process would be reasonable in meeting the requirements of the Act. If the proponent felt that public concern regarding its proposal would be limited, it could choose to go this informal route. The proponent would then proceed to undertake its consultation plan set out in the ADD and prepare the EA document for submission as guided by the ADD. No formal approval of the ADD would be given in this approach, but it would give guidance to the proponent, the public and to the Board if any hearing was required regarding the proposed undertaking.

The second avenue available to the proponent and the public would be the provision of a scoping mechanism to finalize the ADD and to ensure that the decisions made within the ADD received formal approval. Within 60 days of the initial public session and upon filing the ADD with the EA Branch, either the public or proponent could request a formal scoping session to take place. The scoping session would be open to all affected parties. It is proposed that it be presided over by the Environmental Assessment Board. The Board would develop procedures to assess the merits of any request for scoping and determine whether scoping should take place. Members of the Board would function in a manner similar in concept to a Master in the law courts. The ADD would be used as a basis for discussion at the scoping session with a view to determining whether it was appropriate for carrying out the environmental assessment. The EA Board member would issue a decision regarding the proponent's ADD and its proposals concerning alternatives to, proposed study area etc. Such a decision would finalize the ADD and would give firm guidance to the proponent in carrying out the remainder of the Planning and Consultation phase. This scoping session and subsequent decision would also serve to bind the decision on acceptance/refusal of the EA, the Minister's decision on approval of the undertaking and any subsequent Board

hearing, although it is felt that the decision should be open to modification in light of any unforeseeable, important issues that might arise after the scoping session. These would be admitted to a hearing only at the discretion of the Board.

The ADD, therefore, would set boundary conditions for both the public, affected agencies and the proponent in preparing the environmental assessment document and give guidance to any approval that may be given to the EA. The proponent would continue to undertake its consultation plan and attempt to resolve site specific issues that are raised by the public during the remainder of the Planning and Consultation phase. The EA document should contain a section detailing the consultation plan and the results of the consultation that has taken place with the public. This would also include how the issues raised were resolved or how the proponent and participants attempted to resolve the concerns. This section on public consultation, therefore, would become an integral part of any EA document.

RECOMMENDATION 2.9

THAT THE EA ACT PROVIDE FOR THE FILING OF THE ASSESSMENT DESIGN DOCUMENT WITH THE ENVIRONMENTAL ASSESSMENT BRANCH.

RECOMMENDATION 2.10

THAT THE EA ACT PROVIDE FOR A SCOPING SESSION TO BE REQUESTED BY THE PROPONENT OR THE PUBLIC WITHIN 60 DAYS OF THE INITIAL PUBLIC SESSION.

RECOMMENDATION 2.11

THAT THE EA ACT PROVIDE FOR THE EA BOARD TO BE GIVEN THE AUTHORITY TO ASSUME ADDITIONAL DUTIES AS PRESCRIBED IN REGULATIONS.

RECOMMENDATION 2.12

THAT THE EA ACT PROVIDE THAT THE SCOPING SESSION BE PRESIDED OVER BY A MEMBER(S) OF THE EA BOARD, DESIGNATED FOR THAT PURPOSE IN ACCORDANCE WITH RECOMMENDATION 2.11.

RECOMMENDATION 2.13

THAT THE EA ACT PROVIDE THAT THE DECISION OF THE EA BOARD MEMBER, AS A RESULT OF A SCOPING HEARING, BE BINDING ON THE PROCESS, INCLUDING THE DECISION ON ACCEPTANCE/REFUSAL OF THE EA, THE MINISTER'S DECISION WITH RESPECT TO APPROVAL OF THE UNDERTAKING AND ANY SUBSEQUENT EA BOARD HEARING, WITH THE PROVISO THAT IT BE MODIFIED ONLY IN LIGHT OF ANY UNFORESEEABLE SIGNIFICANT ISSUES THAT MAY BE RAISED AND ACCEPTED BY THE BOARD.

PARTICIPANT FUNDING

In the case of many undertakings, the public often needs expert, independent advice in evaluating the complex or highly technical factors involved. Sometimes the public is more confident in the ability of an "outside" expert to provide objective information and analysis. In an effort to encourage as much public involvement as possible, proponents will be encouraged to provide participant funding during the planning and consultation phase of preparing an individual EA. While mandatory funding is

not recommended, it is felt that both the proponent and the Planning and Consultation phase would benefit from such funding. It is also proposed that any decision on funding to be provided by the proponent under the *Intervenor Funding Project Act* (IFPA) at the hearing stage take into account any funding that has been provided during the Planning and Consultation phase. It is also proposed that the EA Board be given the duty, if requested by the proponent, of recommending the distribution of any funding provided by a proponent during PAC.

RECOMMENDATION 2.14

THAT PROPONENTS BE ENCOURAGED TO PROVIDE FUNDING FOR THE PUBLIC DURING THE PLANNING AND CONSULTATION PHASE OF INDIVIDUAL EAs AND THAT THE EA BOARD BE GIVEN THE AUTHORITY IF REQUESTED BY THE PROPONENT TO MAKE RECOMMENDATIONS TO THE PROPONENT AS TO THE DISTRIBUTION OF ANY SUCH FUNDING TO THE PUBLIC.

RECOMMENDATION 2.15

ANY DECISION ON FUNDING TO BE PROVIDED BY THE PROPONENT UNDER IFPA SHOULD TAKE INTO ACCOUNT ANY FUNDING THAT WAS PROVIDED DURING PAC.

ROLE OF THE EA COORDINATOR

The EA Coordinator should be extensively involved in the Planning and Consultation phase. The task of the Coordinator during public consultation should be to advise the proponent to ensure, as far as is possible, that the EA is properly scoped, that public consultation methods are adequate, and that all the appropriate publics are provided with the opportunity to be involved. The coordinator should also provide the proponent with consistent direction with respect to the required content of the EA document and constructive advice on the issues to be addressed in the EA. The EA coordinator would be responsible for determining the EA document adequately deals with those requirements and issues, including those that have been raised by the public and promptly advising the proponent of any deficiencies.

The EA Coordinator should be a facilitator and encourage the settlement of issues by direct negotiation between the parties concerned. The EA Coordinator's role should be to suggest alternative means to reach the goal of developing a satisfactory EA document. The result would be to eliminate or significantly reduce the outstanding issues to be resolved during the EA review period thereby achieving more timely completion of the Review.

To help in the EA Coordinator's function (and all other parties to the EA) a comprehensive guideline on the role of the EA Coordinator should be developed by the Ministry. Coordinators should be given thorough training in how to discharge their responsibilities.

RECOMMENDATION 2.16

THAT A GUIDELINE BE PREPARED ON THE ROLE OF THE EA COORDINATOR IN ALL PHASES OF THE ENVIRONMENTAL ASSESSMENT PROCESS, INCLUDING THE PLANNING AND CONSULTATION PHASE.

RECOMMENDATION 2.17

THAT A COMPREHENSIVE TRAINING PROGRAM BE SET UP WITHIN THE MINISTRY OF THE ENVIRONMENT TO TRAIN COORDINATORS, PROPONENTS AND OTHER GOVERNMENT AGENCIES IN THE EA PROCESS.

FURTHER NOTICE PROVISIONS

Once the proponent has determined its preferred alternative, a further mandatory notice indicating the preferred alternative should be given by the proponent to all of the affected public identified in the Planning and Consultation phase. This notice requirement should be set out in the regulation that is prepared for the initial notice and public session.

Of considerable concern to proponents, especially municipalities, is the need to give a variety of notices under different statutes pertaining to a single undertaking. In an effort to streamline notice provisions as much as possible, it is proposed that the EA Act be amended to allow for the consolidation of notices under other statutes, wherever possible.

RECOMMENDATION 2.18

THAT THE REGULATION PREPARED FOR THE INITIAL PUBLIC NOTICE AND INITIAL MEETING ALSO INCLUDE A REQUIREMENT FOR MANDATORY NOTICE BY THE PROPONENT OF ITS PREFERRED ALTERNATIVE TO ALL THOSE DIRECTLY AFFECTED BY THE ALTERNATIVE AND OTHER INTERESTED PUBLIC AND PARTICIPANTS IDENTIFIED DURING THE PLANNING AND CONSULTATION PHASE.

RECOMMENDATION 2.19

THAT THE EA ACT BE AMENDED TO ALLOW FOR THE CONSOLIDATION OF NOTICE REQUIREMENTS WITH OTHER NOTICE REQUIREMENTS, REQUIRED UNDER OTHER STATUTES, AS APPLICABLE.

PLANNING AND CONSULTATION GUIDELINES

It is important that a comprehensive guideline be prepared for the entire Planning and Consultation phase. This guideline would include all aspects such as the ADD, consultation plan, methods for consultation, notice requirements, and the scoping mechanism. Such a guideline would not only give proponents greater direction during the Planning and Consultation phase, but would also provide information to the public on how the process works and their role.

RECOMMENDATION 2.20

THAT A COMPREHENSIVE PLANNING AND CONSULTATION PHASE GUIDELINE BE PREPARED BY THE MINISTRY.

CHAPTER 3

REVIEW AND ACCEPTANCE

INTRODUCTION

The second phase of the environmental assessment process is review and acceptance and begins once the planning and consultation phase is completed. The ADD is used as the basis for preparation of the EA document and EA document is formally submitted to the Minister for approval.

Under the present process, an EA document is first circulated to all interested government agencies for comments. Next the Minister of the Environment prepares a government review document and gives notice of the opportunity for public review and request for a hearing. The Minister then makes a decision on acceptance of the EA document or exercises several options to require further research or refer the matter to the Board for a hearing. The Board usually makes the decisions on acceptance simultaneously with the approval decision. However, acceptance of the EA document is a prerequisite for EA Act approval of an undertaking. The critical evaluation contained in the government review and any public comments play an important role in the acceptance decision.

The current review process has come under a considerable amount of criticism from proponents, reviewers and the public for the length of time it takes, the inconsistent positions, the uncertainty of reviewers' roles and responsibilities, the complexity of acceptance options and uncertain the role of public participation. Because this phase of the process is administratively controlled by the Ministry and primarily involves other government agencies, it is an important area in which to make improvements. This chapter will examine the issues and problems associated with three main areas: the submission of an EA, the review by government agencies and the public and the decision on acceptance of the EA document. The recommenda-tions will focus and streamline the review, increase public input, provide decision making authority to the Director of the EA Branch, establish time limits and reduce complexity.

EA SUBMISSION

During the PAC phase, the methods and time taken to complete planning studies, conduct public consultation, resolve issues, prepare and submit the EA are all more or less at the discretion of the proponent. With the formal submission of the EA document, control of the process passes to the Ministry. The proponent's sense of control of the process is often replaced with uncertainty. Under current procedures there is no firm basis for the proponent to predict when a decision might be received so as to schedule, budget and plan for future activities. The public review does not commence

until completion of the government review thus lengthening the time to process the submission.

TIME LIMITS

It has been suggested imposing that statutory time limits be imposed on the review and approval process as a means to reduce overall time and give some certainty of completion dates. Other suggestions included provision of adequate resources in the EA Branch to provide continuity of staff, more consistent direction, comprehensive guidelines and development of more efficient administrative procedures to conduct the review. It is important that the Ministry increase its ability and commitment to process EA reviews more efficiently so as to reduce delays. This should include the Minister's intent to meet specific time frames for the completion of reviews and be set out in policy. To facilitate workload projections and planning the Ministry should require all proponents to schedule their EA submissions well in advance and meet a reasonable submission window to maintain their review timetable. Some advance notice will assist all parties to schedule resources.

EA DOCUMENTS

Incomplete and sub-standard EAs, requirements for additional information, and resolution of disputes with review agencies are major reasons for protracted government reviews. Inadequate EA preparation can result from inexperienced proponents, lack of direction or failure to accept advice during PAC, and failure to identify or resolve issues prior to EA submission. There is an obvious reluctance to publish a review while problems remain with the EA document. Often a review can stretch over several months while the EA Coordinator, review agencies and the proponent attempt to resolve disputes or deficiencies in the EA document. Recommendations aimed at increased emphasis on scoping issues and more guidance and direction during PAC should significantly improve the quality and completeness of EA documents.

PUBLIC CONSULTATION

Opportunity for public involvement in the review and approval process is presently provided after the completion of the government review. Many of the public who have an interest in an undertaking will have been involved in the proponents public consultation program during PAC. However, at present there can be a delay of several months to two years between the proponents last consultation during the study and the Notice of Completion of Government Review announcing the thirty day public review period. This delay can cause the public to lose touch with the project's

progress and current status in the EA review and approval process. Such a hiatus can also be counter-productive in resolving public concerns. It is important therefore, that continued public consultation be maintained during the review and acceptance phase and that a public notice of EA document submission be issued by the proponent at the same time as formal submission to the Ministry.

The notice should indicate the opportunity for the proponent or the public to request a hearing upon submission of the EA document. In situations where a proponent requests a hearing the Minister's referral to the EA Board could be made before the review is complete. This would enable the Board and other parties to begin administrative preparations for the hearing sooner including a pre-hearing, and reduce the time between the Decision on Acceptance/Refusal and start of the formal hearing.

RECOMMENDATION 3.1

AMEND THE ACT TO REQUIRE THAT COINCIDENTAL WITH THE FORMAL SUBMISSION OF AN EA THE PROPONENT PREPARE AND DISTRIBUTE A NOTICE OF SUBMISSION OF EA AND OPPORTUNITY FOR PUBLIC REVIEW IN A FORMAT PRESCRIBED BY MINISTRY REGULATION. THE NOTICE SHOULD BE CLEARLY WORDED AND GIVEN TO THOSE IN THE STUDY AREA AND TO INTERESTED AND AFFECTED PARTIES, INCLUDING THOSE IDENTIFIED ON THE PROPONENT'S PUBLIC CONSULTATION MAILING LISTS. IT SHOULD:

- **ANNOUNCE THE SUBMISSION OF THE EA;**
- **SET OUT A 60 DAY PERIOD FOR REVIEWING THE DOCUMENT;**
- **DESCRIBE THE UNDERTAKING AND ITS LOCATION;**
- **INFORM PEOPLE HOW TO OBTAIN A COPY OF THE EA;**
- **LIST THE LOCATIONS FOR VIEWING THE PUBLIC RECORD;**
- **IDENTIFY THE OPPORTUNITY TO REQUEST A HEARING; AND**
- **ADVISE THAT COMMENTS ON THE EA AND REQUESTS FOR A HEARING BE SENT TO THE MINISTER OF THE ENVIRONMENT.**

RECOMMENDATION 3.2

AMEND THE ACT TO PROVIDE THAT UPON SUBMISSION OF THE EA DOCUMENT TO THE MINISTRY THE PROPONENT AND PUBLIC BE ABLE TO REQUEST THE MINISTER TO REFER THE EA TO THE ENVIRONMENTAL ASSESSMENT BOARD FOR A HEARING.

RECOMMENDATION 3.3

THAT THE MINISTRY DEVELOP A MANAGEMENT SYSTEM FOR WORKLOAD PLANNING AND CONTROL. TO HELP THE MINISTRY PLAN FOR ITS EA WORKLOAD, PROPONENTS SHOULD BE RESPONSIBLE FOR SCHEDULING THE DATE OF THEIR EA SUBMISSION WITH THE BRANCH AT LEAST SIX MONTHS IN ADVANCE WITH REGULAR UPDATING.

THE EA REVIEW

At present, once an EA is submitted, it is first reviewed by government agencies and then is available for review by the public. The government review is coordinated by an EA Coordinator who distributes the EA to any of approximately thirty government ministries and agencies that may have an interest in the submission. To facilitate

circulation of the document standard lists of the core review agencies should be established for various types of projects. Other interested ministries and agencies identified during PAC would be added to the core review team. It would also save time if the proponent sent the required number of copies of the EA document directly to the reviewers.

Each review agency is asked to review the EA document with respect to their program interests and mandates. Each ministry usually has a coordinator who circulates the EA within the ministry or agency, compiles the comments into a ministry position and sends it to the EA Coordinator. The EA Coordinator takes the various ministry comments and positions and prepares the government review document.

Currently, the government review is primarily concerned with determining if the EA is acceptable. It provides an evaluation of the technical quality and completeness of the EA in meeting the requirements of the Act, in particular the requirements set out in subsection 5(3) of the Act, and the strengths and weaknesses of the planning process. It also determines if the specific concerns of the review agencies are adequately addressed. Based on the evaluation and comments of the government review team, the review states a position and makes comments on the overall acceptability of the EA.

The government review has come under considerable criticism from proponents, public and reviewers. The most common complaints concern the complexity, inefficiency and time it takes to complete. There is uncertainty created due to a lack of well defined time limits and study requirements. Reviewers often do not know how their comments will be incorporated and question the EA Coordinator's role in the review process. Others note there doesn't appear to be any sense of urgency or efficiency in the processing of reviews by the Ministry and review staff in other ministries.

An analysis of all approved EAs since the program began indicates that the average time to complete the government review, from submission to notice of completion, is twelve months. When a hearing is held the review period averages four months less than when no hearing is required. This difference is a result of the additional time taken to resolve issues during reviews that are not expected to go to a hearing. Time limits for review comments are usually set at forty-five days by the EA Coordinator, but are infrequently met for a variety of reasons. Within the EA Branch there is neither an established time limit nor any special management priority placed on completion of the government review.

GOVERNMENT REVIEWERS

Insufficient staff, a clear understanding of what is required, a lack of trained staff dedicated to the review function and failure to meet deadlines are some typical problems encountered with review agencies. As a result, comments from government reviewers are often not as complete and focused on their mandates and issues as required. Issues are not always addressed thoroughly by the responsible ministry and positions established in the review are sometimes altered at a hearing. A clear statement of review expectations within the review agencies and trained staff and responsible for preparing review comments would help improve quality and reduce the time required to complete the review. The Ministry should ensure it has review guidelines and should work with all reviewers. The EA Coordinator should actively facilitate the review and resolve problems by directing and focusing reviews on contentious and unresolved issues. Where an important concern has not been addressed the EA Coordinator should take the initiative to obtain the necessary information from the appropriate agency or through independent sources.

PUBLIC REVIEW

Under the present process, the public review does not begin until after the government review is completed and the Notice of Completion is issued. A separate public review period appears inefficient and does not allow for public comment to be a part of the formal government review of the EA document. The public review, therefore, should occur at the same time as the review by agencies and incorporated into a single "Review." The EA Coordinator would be responsible for facilitating the public review and including public comments in the Review. Including the comments of the public would also contribute to the scope and perspectives contained in the Review. The public should also have the opportunity to assess how the Review has dealt with their comments and request a hearing during a second review period of twenty days following the Notice of Completion of Review and Decision on Acceptance or a subsequent Notice of Acceptance Decision made by the EA Board.

ROLE OF THE REVIEW

The scope, content and status of the Review is another area that needs to be addressed. Current Ministry policy states the role of the Review is to evaluate the strengths and weaknesses of the planning process and assess whether the requirements of subsection 5(3) of the EA Act have been met. The Review is also intended to identify outstanding issues, provide information and advice in reaching a decision on acceptance, help the public in evaluating the EA and identify data and information

deficiencies and provide advice to the proponent. At present the Review does not address approval of the undertaking because public feedback on the EA has not been received.

Limiting the Review to deal only with EA acceptability results in a duplication of effort, added time and confusion for reviewers and EA Coordinators. Including comments on approval would provide a single focus of advice concerning decisions on acceptance and approval and allow reviewers to state all their concerns and proposed requirements at one time. The addition of suggested terms and conditions of approval would help resolve some issues and give reviewers a means to execute their ministry's mandate.

The current status of the government review document is a contentious issue for many review agencies and public groups. Does the review represent a government position, a Ministry position or an EA Branch position? Under current practice, the review provides an evaluation of the content of the EA and conclusions regarding adequacy in meeting requirements of subsection 5(3) of the EA Act based on the comments received from all ministry reviewers. There is little original analysis of the document or the significance of the comments.

The proposed Review should present a Ministry position on acceptance of the EA document based on the Branch's own analysis and consideration of all the comments of ministries, government agencies and the public. It should make a specific recommendation on acceptance/refusal, with supporting reasons, and outstanding matters and include proposed terms and conditions regarding the approval decision. It should be as comprehensive and factual as possible in dealing with areas and issues critical to the decision and clearly summarize and consolidate all positions.
The Review would continue to be prepared by the EA Branch. The EA Coordinator should take a more "hands on role" in resolving concerns between parties, assessing the relevance of comments and outstanding issues and applying reason and judgement to determine if the EA Document is adequate and complete. The EA Coordinator would also facilitate the public review and incorporate public comments in the Review and the recommendation on acceptance/refusal. It would be the EA Coordinator's responsibility to incorporate the various comments in the Review and consult each review agency on how their position is dealt with in the Review.

RECOMMENDATION 3.4

THAT THE MINISTRY MAINTAIN A REGISTRY OF CORE REVIEW AGENCIES INDICATING THEIR STANDARD INTEREST IN VARIOUS TYPES OF PROJECTS. THE EA COORDINATOR SHOULD REFER TO THE REGISTRY, TOGETHER WITH ANY OTHER MINISTRIES IDENTIFIED DURING PAC IN ESTABLISHING THE DISTRIBUTION LIST FOR THE REVIEW OF THE EA DOCUMENT.

RECOMMENDATION 3.5

BY POLICY THAT WITHIN TEN DAYS OF SUBMISSION OF AN EA THE EA COORDINATOR BE REQUIRED TO NOTIFY ALL REVIEW AGENCIES OF THE START OF THE REVIEW AND PROVIDE SUFFICIENT INSTRUCTIONS TO FOCUS AND EXPEDITE THE REVIEW. THE FORM REQUESTING COMMENTS SHOULD BE REVISED TO CLEARLY SPECIFY AREAS TO BE ADDRESSED, POTENTIAL DEFICIENCIES AND KEY ISSUES RELATED TO THE REVIEW. A PERIOD OF SIXTY DAYS WILL BE SET FOR THE RETURN OF COMMENTS. IF NO COMMENTS ARE RECEIVED FROM A REVIEW AGENCY DURING THIS PERIOD, THE REVIEW WILL BE PREPARED ACCORDINGLY. ANY EXTENSION OF THE REVIEW PERIOD MUST BE APPROVED BY THE DIRECTOR OF THE EA BRANCH.

RECOMMENDATION 3.6

BY REGULATION REQUIRE THAT THE PROPONENT BE RESPONSIBLE FOR DISTRIBUTING THE REQUIRED NUMBER OF EA DOCUMENTS TO EACH REVIEW AGENCY AS SPECIFIED BY THE EA COORDINATOR.

RECOMMENDATION 3.7

THAT THE MINISTRY DEVELOP A POLICY ON THE REVIEW OF EA DOCUMENTS AND THE PREPARATION AND CONTENT OF REVIEWS. PROVIDING THAT:

- **THE REVIEW PROVIDE A COMPREHENSIVE AND ANALYTICAL EVALUATION OF THE EA DOCUMENT BASED ON GOVERNMENT REVIEW AGENCY AND PUBLIC COMMENTS AND THE EA COORDINATOR'S ANALYSIS. THAT THE REVIEW CONTAIN MINISTRY POSITION AND RECOMMENDATION ON ACCEPTANCE/REFUSAL OF THE EA DOCUMENT, WITH REASONS. THAT SPECIFIC COMMENTS AND ADVICE WITH RESPECT TO APPROVAL OF THE UNDERTAKING, INCLUDING PROPOSED TERMS AND CONDITIONS, ALSO BE INCLUDED.**
- **THE EA COORDINATOR BE RESPONSIBLE FOR CONSIDERING AND INCORPORATING THE VARIOUS GOVERNMENT COMMENTS IN THE REVIEW AND CONSULTING EACH REVIEW AGENCY ON HOW THEIR COMMENTS ARE ADDRESSED IN THE REVIEW.**
- **THAT THE EA COORDINATOR BE RESPONSIBLE FOR COORDINATING THE PUBLIC REVIEW, PROVIDING ADVICE AND ASSISTANCE TO THE PUBLIC AND INCLUDING PUBLIC COMMENTS IN THE REVIEW.**

RECOMMENDATION 3.8

REVIEW MINISTRIES AND AGENCIES SHOULD ASSIGN REVIEW COORDINATORS WITH TRAINING, PRIMARY RESPONSIBILITY AND AUTHORITY TO PROCESS EA REVIEWS AND PROVIDE COMMENTS IN A TIMELY MANNER. EACH REVIEW AGENCY SHOULD PREPARE GUIDELINES OUTLINING THEIR REVIEW PROCEDURES AND GENERIC EXPECTATIONS RELATED TO THEIR PROGRAM MANDATES FOR USE BY THEIR REVIEWERS AND THE EA BRANCH.

ACCEPTANCE/REFUSAL OF THE EA DOCUMENT

Currently, the Minister of the Environment makes two separate decisions. The first relates to acceptance of the EA document and the second on approval/refusal of the undertaking. It is important to note that the Minister does not have the specified

authority to refuse the EA document. The Minister may refer decision-making authority to the EA Board under the EA Act or to the Joint Board under the CH Act. The requirement for and distinction between these two decisions is an initial source of confusion. The adequacy of the EA document is essentially a technical evaluation ás determined by the EA Branch with the benefit of comments from other government reviewers. It is primarily a technical and administrative decision that the document is functionally complete and its content technically adequate to proceed with making a decision on the approval of the undertaking. As set out in chapter 2, a number of recommendations are proposed to require the preparation of an ADD, to require scoping and issue resolution during PAC, and to give the EA Coordinator more responsibility and authority for advising the proponent. To provide the necessary authority and accountability to effectively implement these recommendations it is proposed to expand the current authority of the Minister to accept the EA document by adding a provision for refusal. Authority to make this decision would be delegated to the EA Branch Director by regulation. With authority to make this decision, the Director, through the EA Coordinator, is in a much stronger position to advise or require proponents to deal with issues and requirements during PAC that are necessary for an acceptable EA document.

Presently when the Minister refers both acceptance and approval decisions to the Board, the hearing deals with both matters simultaneously. The EA Board has indicated it considers the acceptance decision as relating to form, content, and adequate process and would prefer not to have to deal with those issues in the approval hearing. In the Board's opinion considerable time may be spent during the hearing arguing whether the EA document is acceptable, or in making amendments. Hearing time and cost could be saved if an approval hearing did not begin until an acceptable EA document was available. Delegation of the acceptance/refusal decision to the Director will help achieve this objective.

If the Director refuses to accept the EA document a provision for the proponent to appeal to the EA or Joint Board should be available. Because a refusal decision can stop the EA application from proceeding further, a right to appeal is necessary. The appeal hearing would only deal with the specific reasons for refusal as stated in the Director's decision. The decision of the Board would be final. The right for other parties to appeal an acceptance decision is not felt to be required since there are subsequent opportunities to address issues with respect to approval including a request for an approval hearing and appeal the approval decision itself.

There are a series of optional decisions presently available to the Minister with respect to acceptance. Experience suggests these create a complex and potentially prolonged decision-making process. During the review the Minister may give "notice of intent" to require the proponent to conduct further research, order the proponent to carry out

further research, issue a notice and allow time for further comment on the revised EA, accept the EA, amend and accept the EA or refer the EA to a hearing. Most of these provisions relating to further research and amendment of an EA are infrequently used. Most proponents voluntarily agree to provide additional research when requested. The elimination of these redundant or seldom used options would simplify and reduce complexity in the acceptance process. The delegated authority of the Director to make the acceptance/refusal decision should provide incentive for proponents to comply with direction given during the PAC phase and amend an EA Document if requested by the Branch therefore eliminating the need for the provisions of sections 10, 11 and 12 of the EA Act.

As previously indicated, the average time for preparing the government review is twelve months when no hearing is required and eight months with a hearing. The average time drops dramatically when a hearing is requested by the proponent at or before submission. The preparation of government review is generally the single most time consuming part of the approval process, but reviews of major EA documents can be completed in considerably less time. If support for changes in the application and practice of the EA process are to be achieved, the timing and efficiency of the Review preparation must be improved. The establishment of a sixty day time limit for the preparation of the Review and the decision on acceptance/refusal after receipt of review comments should be introduced by policy. Together with other recommended time limits, a Notice of Completion and Decision of Acceptance/Refusal can be issued within four months of an EA submission.

RECOMMENDATION 3.9

AMEND THE ACT TO PROVIDE THE MINISTER THE AUTHORITY TO ACCEPT OR REFUSE THE EA DOCUMENT, TO ISSUE A COMBINED NOTICE OF COMPLETION AND DECISION ON ACCEPTANCE/REFUSAL AND TO DELEGATE THIS AUTHORITY. REASONS FOR THE ACCEPTANCE/REFUSAL DECISION MUST BE PROVIDED.

RECOMMENDATION 3.10

BY REGULATION DELEGATE THE AUTHORITY TO MAKE THE ACCEPTANCE/REFUSAL DECISION AND ISSUE THE NOTICE TO THE EA BRANCH DIRECTOR.

RECOMMENDATION 3.11

THAT BY MINISTRY POLICY THE NOTICE OF COMPLETION AND DECISION ON ACCEPTANCE/REFUSAL BE ISSUED WITHIN 120 DAYS OF THE DATE OF SUBMISSION OF THE EA DOCUMENT, PROVIDED THE SUBMISSION IS MADE ACCORDING TO THE SUBMISSION SCHEDULE AND NO AMENDMENTS ARE NECESSARY. THE MINISTRY POLICY SUGGESTED IN RECOMMENDATION 3.7 SHOULD CLEARLY STATE THE 120 DAY TIME FRAME FOR THE COMPLETION OF THE REVIEW.

RECOMMENDATION 3.12

AMEND THE ACT TO PROVIDE THAT THE NOTICE OF COMPLETION AND DECISION ON ACCEPTANCE/REFUSAL BE FOLLOWED BY A TWENTY DAY PERIOD FOR: COMMENTS ON

THE REVIEW AND DECISION; SUBMISSIONS ON APPROVAL OF THE UNDERTAKING, INCLUDING REQUESTS FOR A HEARING.

RECOMMENDATION 3.13

AMEND THE ACT TO PROVIDE THAT WITHIN TWENTY DAYS OF THE DECISION TO REFUSE ACCEPTANCE OF AN EA DOCUMENT, THE PROPONENT BE GIVEN THE ABILITY TO APPEAL THE DECISION TO THE EA BOARD BASED ON THE AREAS AND REASONS CONTAINED IN THE DECISION. THE DECISION OF THE BOARD IS FINAL.

RECOMMENDATION 3.14

SECTIONS 10 AND 11 OF THE EA ACT SHOULD BE AMENDED TO ELIMINATE BOTH PROVISIONS FOR AMENDMENT OF AN EA BY THE MINISTER, AND ORDERS RELATED TO FURTHER RESEARCH. THEY SHOULD BE REPLACED BY A PROVISION TO PERMIT THE PROPONENT TO MAKE MINOR AMENDMENTS TO AN EA DOCUMENT AFTER SUBMISSION AND PRIOR TO ISSUANCE OF THE REVIEW DOCUMENT, AT THE REQUEST AND AGREEMENT OF THE EA BRANCH DIRECTOR.

CHAPTER 4

APPROVALS

INTRODUCTION

The third phase of the proposed revised EA process deals with the approval of an undertaking by the Minister or Board. It begins after the twenty day review period provided for in the Notice of Completion and Decision.

There is a widely held concern that it takes an excessive amount of time to obtain approvals under the EA Act. Decisions on approval or referral to the EA Board for hearings contribute substantially to the overall time for approval. The length of time, cost and procedural inefficiencies of EA hearings are major sources of problems for participants and the Board itself. Provisions for appeals of approval decisions and clarification of decisions also need to be considered. This chapter will discuss issues and recommendations related to the decision to approve the undertaking, the Environmental Assessment Board hearings, and appeals of decisions.

MINISTER'S DECISION

Section 14 of the Act gives the Minister the authority to give approval to proceed with an undertaking, give approval subject to terms and conditions, or refuse to give approval. Sections 12 and 13 of the Act provide for the Minister to require the EA Board hold a hearing with respect to both acceptance of an EA document and approval of the undertaking. Since there are no maximum time limits set for these decisions by the Minister, this contributes to the overall uncertainty of timing in the approvals process.

The Minister's decision-making powers under the Act, mainly in sections 13 and 14, are not explicitly transferred to the EA Board at the time of a hearing although common practice assumes that they are under section 20 of the EA Act. Arguments have been made before the Board, however, to the contrary and a clarification of the matter would avoid any future misunderstandings.

An analysis of completed EAs that did not go to a hearing shows an average time of three months from an acceptance decision to an approval decision. For projects that went to a hearing, the average time for both acceptance and approval was fifteen months. Previous recommendations in chapter three to place time limits on completion of the Review and the EA Branch Director's decision to accept or refuse the EA will significantly reduce the review and acceptance periods. To complete the provision of certainty and establish a predictable timetable for the entire review and approval process, a reasonable time limit also should be established for the Minister's decision on approval or referral to the EA Board. A target of 180 days from EA docu-

ment submission to approval or referral is recommended. The Minister's decision, therefore would have to be issued within sixty days of the publication of the Notice of Completion and Decision on Acceptance/Refusal.

There are several points in the present approval process where the Minister can exercise discretion to require or refuse a hearing before the EA Board: after the thirty day public review period following notice of completion of the preparation of the review, sections 9 and 12(2); after the fifteen day period following notice of proposal to amend, sections 10 and 12(2); and, after notice of acceptance or amendment and acceptance, section 13. Proponents sometime request a hearing upon submission of the EA document. Except when the Minister proposes to amend an EA, the Minister cannot currently refer the EA for a hearing before the preparation of the government review, issuance of notice of completion and the thirty day public review period. The ability for anyone to request a hearing after submission of the EA document should be provided to improve efficiency and avoid confusion. The proponent should be able to request a hearing upon EA submission as is presently provided for under the CH Act. Proponent, public and other intervenors would have a period to request a hearing from the date the EA document is submitted until the end of the twenty day review period following the Notice of Completion and Acceptance Decision or any subsequent Notice on Acceptance. The Minister may refer a proponent's request to the Board upon submission, but a decision on other requests would not be made until after completion of the Review and the twenty day review period. Providing the Minister authority to refer an EA to the Board prior to the decision on acceptance would permit the Board and parties to begin certain hearing preparations such as scoping, order of evidence and consideration of intervenor funding requests. However, the approval hearing would not begin until after the EA document is reviewed and accepted by the EA Branch Director or the Board rules on acceptance as a result of an appeal by the proponent.

To continue the scoping initiatives introduced during PAC, the Minister should have authority to limit the matters that are referred to the EA Board. This would allow some initial scoping of the major hearing issues based on scoping and issue resolution during PAC, the Review and comments received on the Review. If applicable, advice should be given to the Minister in the Review as to those matters that should be referred to the EA Board.

To further guide the Minister in determining the necessity for an approval hearing, criteria should be established, similar to those criteria proposed for bump-up requests, (see Recommendation 6.14), that the Minister would consider in making a decision. A guideline should be developed concerning the use of the criteria to help establish and evaluate legitimate requests for a public hearing. Once the decision on a hearing request is made by the Minister, the decision and reasons should be made public.

Circumstances may occur when waste disposal projects may be subject to both the EA Act (under which hearings may be requested) and to mandatory hearings under the EP Act, Part V. The same risk of repeated hearings may apply to certain water and sewage projects under the OWR Act. All such hearings are before the EA Board. The current version of section 34 of the EA Act was drafted to avoid this possibility of duplicate hearings through use of either:

clause (a) which allows the Minister to order that hearings under the EP Act or OWR Act may proceed and that the EA Act or part of it not apply; or

clause (b) which allows the Minister to order the EA Act applies and that hearings under the other acts not proceed.

Use of clause (a) has raised objections that it provides a means of exemption from the EA Act additional to the formal exemption provisions of section 29. By contrast, clause (b) has proved a useful means to dispense with unneeded hearings, particularly where a waste disposal project was subject to a mandatory hearing under the EP Act Part V in the absence of public demand or technical need. Placing the project under the EA Act makes the hearing a matter for request. No request means that time and expense of a hearing can be avoided. Hearings have been dispensed with in this way on at least three occasions.

An amendment to section 34 of the EA Act is proposed, to retain the benefits of clause (b) while avoiding use of clause (a) as a means of exemption from the Act.

It may be noted that the CH Act does not apply under the circumstances described, since its role is to consolidate hearings before more than one tribunal to a single hearing before a Joint Board.

RECOMMENDATION 4.1

THAT BY POLICY THE DECISION OF THE MINISTER TO APPROVE (WITH APPROPRIATE TERMS AND CONDITIONS) OR REFUSE TO APPROVE AN UNDERTAKING OR TO REQUIRE A HEARING BY THE BOARD, BE ISSUED WITHIN 60 DAYS OF AN ACCEPTANCE DECISION BY THE DIRECTOR, OR ON APPEAL, BY BOARD.

RECOMMENDATION 4.2

AMEND THE ACT TO PROVIDE THAT REQUESTS FOR HEARINGS BE CONSIDERED BY THE MINISTER FOLLOWING THE EA DOCUMENT SUBMISSION UNTIL THE END OF THE TWENTY DAY REVIEW PERIOD FOLLOWING THE NOTICE OF COMPLETION AND DECISION ON ACCEPTANCE OR ANY SUBSEQUENT NOTICE OF ACCEPTANCE.

RECOMMENDATION 4.3

AMEND THE ACT TO PROVIDE THAT THE MINISTER, UPON A REQUEST BY THE PROPONENT ON SUBMISSION OF AN EA, MAY REFER THE EA TO THE BOARD FOR A HEARING. THE APPROVAL HEARING NOT COMMENCE UNTIL THE EA DOCUMENT HAS

BEEN ACCEPTED BY THE DIRECTOR OR THE EA BOARD ON APPEAL OF A DIRECTOR'S REFUSAL DECISION.

RECOMMENDATION 4.4

AMEND SUBSECTION 12(2) AND CLAUSE 13(B) OF THE EA ACT TO PROVIDE THAT WHEN THE EA BOARD CONDUCTS A HEARING, IT EXERCISES THE MINISTER'S POWERS TO MAKE DECISIONS AND IMPOSE TERMS AND CONDITIONS.

RECOMMENDATION 4.5

AMEND THE ACT TO PROVIDE THAT THE MINISTER BE GIVEN THE AUTHORITY TO SCOPE THE ISSUES AND AREAS TO BE CONSIDERED BY THE BOARD WHEN REFERRING AN UNDERTAKING FOR A HEARING ON APPROVAL.

RECOMMENDATION 4.6

THAT THE MINISTRY DEVELOP A GUIDELINE FOR RESPONDING TO REQUESTS FOR HEARINGS, WITH CRITERIA FOR MAKING THE DECISION AS FOLLOWS:

A) THE EXTENT OF PUBLIC CONCERN;
B) THE OVERALL PUBLIC INTEREST BEING SERVED BY APPROVING THE UNDERTAKING;
C) THE URGENCY OF THE UNDERTAKING; AND,
D) WHETHER THE REQUEST IS FRIVOLOUS, VEXATIOUS OR THAT A HEARING IS UNNECESSARY OR MAY CAUSE UNDUE DELAY.

RECOMMENDATION 4.7

THAT SECTION 34 BE AMENDED TO PROVIDE THAT, WHERE AN UNDERTAKING SUBJECT TO THE EA ACT MAY ALSO BE SUBJECT TO A HEARING UNDER PART V OF THE EP ACT OR PROVISIONS OF THE OWR ACT, THEN THE PROVISIONS OF THE EA ACT SHALL APPLY. THE HEARINGS THAT WOULD OTHERWISE BE REQUIRED UNDER THE EP OR OWR ACTS ARE NOT REQUIRED UNLESS THE MINISTER ORDERS THEM TO BE HELD, OR THEY ARE REQUIRED TO BE HELD AS A CONDITION OF APPROVAL UNDER THE EA ACT.

THE ORDER OR APPROVAL MAY PRESCRIBE THE SUBJECT MATTER OF THE HEARING UNDER THE EP OR OWR ACT.

RECOMMENDATION 4.8

COPIES OF ALL REQUESTS FOR A HEARING, ALONG WITH THE RESPONSES TO THESE REQUESTS, BE PLACED ON THE PUBLIC RECORD.

THE ENVIRONMENTAL ASSESSMENT BOARD AND HEARINGS

Under the EA Act the Environmental Assessment Board is given decision-making powers for projects referred to it by the Minister. It is proposed that the Board retain its role and powers as currently set out in the EA Act. The hearing process, however, by reason of its complexity, duration, and costs needs to be revised. Many submissions received during the course of the review identified problems with the length of time, cost, and format of hearings held under the EA and CH Acts. Some

have found the formal and adversarial atmosphere of hearings intimidating and a deterrent to meaningful citizen participation.

There is a role the Board can play in assisting the Ministry in developing more comprehensive guidelines for preparation of EA documents. To respond to the requirements for more comprehensive and prescriptive guidelines, the Ministry in conjunction with the EA Board should develop draft generic guidelines to guide participants through similar types of projects. The Board can contribute its experience by advising the Ministry what information and issues are most relevant, the methods or approaches used by proponents that the Board has found useful in addressing environmental effects and effective techniques for public involvement in the process. The draft guidelines should be circulated for public review. The Board could be utilized to convene an informal hearing involving all interested parties and make recommendations to the Ministry in finalizing the guidelines. Guidelines developed in this manner would likely be more helpful and acceptable to EA practitioners and participants. The result also would be a better understanding of EA requirements and improvement in the content and quality of EA submissions.

It is the opinion of the Board and many others that failure to effectively scope and resolve issues during pre-submission consultation and prior to commencement of a hearing contributes substantially to the length of hearings. Scoping during the proposed PAC should help focus the planning studies and public consultations on key issues and concerns. This in turn will facilitate resolution of issues to the greatest extent possible and concentrate efforts on the major or outstanding concerns in the EA document. In addition to the recommendation giving the Minister scoping powers, it is recommended that such a provision be introduced for the Board. Scoping decisions should form the basis for the Board to scope the approval hearing. In this regard, it is recommended that any scoping decision made during PAC be binding on the Board at any subsequent hearing, with the proviso that the Board be able to entertain any new evidence of a significant nature that would require variation from the original scoping decision. Issue resolution during the PAC and Review and Acceptance phases should also enable the Board to further scope the hearing.

An area where the Board has introduced scoping is in the identification of issues and presentation of evidence during a hearing. There is a growing tendency among proponents to present extensive evidence in chief to cover every aspect of their cases. Parties respond in kind with extensive cross-examination and evidence of their own. The introduction of formal scoping procedures in the Board's Rules of Practice and Procedure would assist the parties and the Board in focusing evidence on key issues and enable hearing time to be used more effectively.

The EA and Joint Boards have introduced various other procedural measures designed to improve the efficiency and expedite hearings without limiting the involvement of participants. These have included changes regarding qualification of expert witnesses, presentation of oral evidence, witness statements, and draft terms and conditions. Given the increasingly complex and time consuming nature of hearings the Board should have full legislative support and authority to implement any procedural improvements it considers necessary. To this end, it is recommended that the Board develop a discussion paper and convene a "round table" discussion to introduce these techniques and others into its Rules of Practice and Procedure. The following sets out a tentative list of those areas which the Board should consider:

- requirements for pre-filed evidence and interrogatories;
- requirements for meetings of expert witnesses without counsel present;
- preparation of statements of agreed facts and listing of outstanding issues;
- pre-hearing mediation, conciliation or arbitration by Board members or staff;
- degree to which pre-filed evidence precludes need for oral evidence;
- presentation and order of evidence;
- informality of the process, e.g. joint witness panels examined collectively by the proponent, intervenors and Board;
- consideration of procedural and non-evidentiary matters outside the hearing;
- requirements for fairness issues to be specifically addressed at the hearing;
- the role and use of Board counsel and technical staff; and,
- use of cost award powers to penalize parties for not complying with Board directives, orders or unduly prolonging the hearing.

Proponents, hearing participants, counsel, and Board members should collectively participate in informal discussions to develop the procedures. All those involved in the hearing process stand to benefit from the development of mutually acceptable methods to improve the efficiency and reduce the length and cost of hearings. The release of the Board's discussion and procedural recommendations to coincide with the public review to this Discussion Paper would be advantageous for a coordinated implementation of changes to the Act and regulations.

Another aspect of hearings which is of particular concern to some is the formal and adversarial atmosphere. Ordinary citizens find the presentation of sworn testimony, the prospect of cross-examination, and the presence of experts and lawyers intimidating and inhibiting. While the presence and role of lawyers is unlikely to decrease the Board should examine ways to make the presentation of contrary positions less adversarial. While counsel as a rule go lightly with public witnesses, members of the public may be reluctant to take the stand after observing the treatment of some expert witnesses. Presentation of evidence and opinion by public witnesses should only be questioned for points of clarification and accuracy. The Board should

promote the involvement of public witnesses and seek to create a supportive, non-adversarial atmosphere for their participation.

The scheduling of hearings during normal business hours restricts the attendance of most members of the public. The use of satellite or local hearings to enable people affected by a project a convenient opportunity to appear before the hearing panel should be continued together with more evening sessions. Less formal 'town hall meeting' style sessions should also be provided to maximize public participation. Initiatives to stem the increasing legal complexity of the hearing process and to focus on the merits and implications of proposals on the environment should be pursued.

RECOMMENDATION 4.9

THE EA ACT PROVIDE AUTHORITY FOR THE EA BOARD TO CONVENE SCOPING HEARINGS DURING PAC AND TO SCOPE THE ISSUES AND AREAS TO BE ADDRESSED IN AN APPROVAL HEARING.

RECOMMENDATION 4.10

THAT THE MINISTRY DEVELOP GENERIC GUIDELINES FOR PREPARING ENVIRONMENTAL ASSESSMENTS FOR VARIOUS ACTIVITIES AND UNDERTAKINGS; THE EA BOARD TO HOLD INFORMAL HEARINGS WHERE ALL INTERESTED PARTIES CAN PARTICIPATE.

RECOMMENDATION 4.11

THAT THE EA BOARD DEVELOP A DISCUSSION PAPER AND CONVENE INFORMAL DISCUSSIONS ON PROCEDURAL IMPROVEMENTS FOR HEARINGS WITH A VIEW TO AMENDING ITS RULES OF PRACTICE AND PROCEDURE.

RECOMMENDATION 4.12

THAT THE BOARD CONTINUE ITS EFFORTS TO MAKE HEARINGS MORE ACCESSIBLE TO THE PUBLIC AND USE ITS DISCUSSION PAPER AND INFORMAL DISCUSSION TO INVESTIGATE METHODS TO ENCOURAGE AND FACILITATE MORE CITIZEN INVOLVEMENT IN THE HEARING PROCESS.

APPEALS AND CLARIFICATION

As discussed in chapter 3, a decision by the Director of the EA Branch to refuse acceptance of the EA document will have major implications for the proponent. Therefore, provision should be made for the proponent to be able to appeal a refusal decision to the EA Board within twenty days of the decision. The proponent would have the option of requesting a separate hearing on acceptance or requesting consecutive hearings on acceptance and approval. The approval hearing could only proceed after a positive acceptance decision. This type of appeal hearing would only deal with the specific reasons for refusal. It should be shorter compared to current hearings. This revised approach to acceptance would eliminate time currently spent at the main approval hearings arguing and supplementing deficiencies in the EA document and would allow the Board to focus the hearings on approval of the proposed undertaking.

Experience with EA approvals has shown that proponents may need to make changes to an u ıdertaking following approval of that undertaking.

Once an EA has been accepted or approval given to an undertaking, however, section 17 of the EA Act applies. As a result, a full EA process on the change would be required to accommodate any kind of change. Although there is a possibility for the proponent to obtain an exemption order, a more flexible procedure is desirable.

Decisions of the Board are final unless varied or substituted by the Minister within twenty-eight days of receipt from the Board. The Minister refers the matter to Cabinet for review and revision and must give reasons when a Board decision is varied. The decision by the Minister to change or substitute a Board decision is final. Although this procedure is effectively the same as the appeal provisions under the CH Act it has none of the formal appeal procedures. The addition of specific appeal procedures to Section 23 of the EA Act similar to those in the CH Act would provide consistency in application of appeals.

When the Minister or the EA Board has given approval to an undertaking, part of the decision may require clarification, with, of course, the proviso that the undertaking may not be materially changed as approved.

Currently the EA Act contains no formal procedure to clarify or change a decision. Subsection 12(2) of the CH Act, however, allows joint boards to be re-established to rehear any matter under the original hearing to amend its decisions to clarify the matter. A similar provision is therefore recommended for the EA Act.

RECOMMENDATION 4.13

THAT SECTION 23 OF THE EA ACT BE AMENDED TO REFLECT THAT A DECISION OF THE EA BOARD BECOMES FINAL WHERE NO APPEAL APPLICATION IS MADE TO THE LIEUTENANT GOVERNOR IN COUNCIL WITH THE EXPIRY OF THE 28TH DAY AFTER THE ISSUANCE OF THE DECISION.

RECOMMENDATION 4.14

AMEND SECTION 17 OF THE EA ACT TO GIVE MORE FLEXIBILITY TO THE PROPONENT IN MAKING CHANGES TO AN EA SUBSEQUENT TO THE APPROVAL DECISION:

a) THE PROPONENT SHOULD PROVIDE INFORMATION DETAILING THE RATIONALE FOR THE CHANGE, THE PROPOSED CHANGE AND ITS EFFECTS;

b) THERE SHOULD BE PUBLIC NOTICE OF THE PROPOSED CHANGE TO ALL PARTIES INVOLVED IN THE PREVIOUS APPROVAL DECISION;

c) THERE SHOULD BE A MINIMUM 30 DAY PERIOD FOR PUBLIC COMMENT ON THE PROPOSED CHANGE AND PROVISION TO REQUEST A HEARING ON THE CHANGE BEFORE THE BOARD. A REVIEW OF THE PROPOSED CHANGE SHOULD BE COMPLETED BY THE MINISTRY.

d) IF THE ORIGINAL UNDERTAKING HAS BEEN BEFORE THE BOARD OR JOINT BOARD, ONLY THAT BOARD WOULD HAVE THE POWER TO MAKE THE DECISION ON

WHETHER 1) TO APPROVE THE CHANGE WITHOUT A HEARING; 2) TO REJECT THE CHANGE WITHOUT A HEARING; 3) TO REQUIRE A HEARING; OR 4) TO REQUIRE A FULL NEW EA ON THE CHANGE. IF THE MATTER HAS NOT BEEN BEFORE THE BOARD, THEN THE MINISTER MAKES THIS DECISION SUBJECT TO C) ABOVE; AND,

RECOMMENDATION 4.15

AMEND THE EA ACT TO AUTHORIZE THE MINISTER TO AMEND PREVIOUS MINISTERIAL APPROVAL DECISIONS FOR THE PURPOSE OF CLARIFYING THEM, AND THE RE-ESTABLISHMENT OF THE BOARD TO AMEND A DECISION FOR THE PURPOSE OF CLARIFICATION INCLUDING THE REHEARING OF ANY PART OF THE MATTER IT CONSIDERS NECESSARY; THE AMENDMENT SHOULD NOT MATERIALLY CHANGE THE UNDERTAKING AS APPROVED.

CHAPTER 5

MONITORING

INTRODUCTION

Monitoring is the last aspect of the EA process. The purpose of this chapter is to examine needs for and make recommendations on monitoring procedures to follow an EA approval of the undertaking, as implementation of the undertaking proceeds. Monitoring activities could also be justified when an undertaking was exempted from EA and subject to conditions. There are concerns that insufficient attention has been paid to post-approval monitoring, and that the EA Act contains no specific monitoring requirements.

A monitoring program can have three main uses. It can determine the level of compliance with conditions of approval or exemption or other standards; an enforcement program can be developed to give assurance of compliance; and monitoring can be a source of information for the study of environmental effects.

In the absence of any consistent follow-up activity by the Ministry, proponents have shown little interest in monitoring. The current practice of voluntary self-compliance by proponents with minimal reporting is unsatisfactory. And, as noted earlier, the lack of monitoring records and information has contributed to difficulties experienced in trying to determine benefits from the practice of EA.

MONITORING COMPLIANCE WITH CONDITIONS AND STANDARDS

Compliance monitoring is the use of monitoring to show how well an undertaking has been constructed, implemented and operated in accordance with the standards, terms and conditions of approval, and commitments contained in the EA document.

A well designed program can benefit proponents, the public, and regulatory agencies. Proper awareness and surveillance of requirements helps to identify and deal with on-site problems quickly, so as to reduce possible environmental damage, public complaints and delays to the construction schedule. It can also facilitate the timely clarification and interpretation of approval conditions or indicate a need for modifications.

Subsection 5(3) of the EA Act requires the EA document to contain a prediction of effects on the environment and a description of actions to mitigate those effects. Sections 14 and 16 respectively, provide authority for attaching terms and conditions of approval and the requirement to comply with them. Other sections give authority to provincial officers to make inspections necessary to administer the Act, require proponents to report any potential or actual inability to comply with terms and conditions, and set penalties for failure to comply with any order, term or condition of an approval under the EA Act. The EA Act does not, however, specifically require regu-

lar compliance monitoring and reporting by either the proponent or the Ministry to verify that approval conditions have been met.

Responsibility for meeting approval and exemption requirements rests with proponents. The Minister and the EA Board regularly attach terms and conditions to approvals. Certain decisions on approval would not have been given without specific terms and conditions attached. The Board has expressed concern that certain conditions established on approval are not being monitored for compliance and there is no formal process or procedure in place to monitor compliance. Some recent approvals have included conditions to require compliance reporting by the proponent but as with most other conditions there is no Ministry program in place or individuals responsible for administration, verification and enforcement. At present, the responsibility of the EA Coordinator ends once the undertaking is approved and no one is assigned responsibility for monitoring a project during implementation. Another concern is that conditions of approval may tend to lack precision or be inconsistent, making compliance and verification somewhat subjective.

In 1986, the EA Branch issued a report entitled *Environmental Assessment Compliance Monitoring Program Proposal* for discussion. The report outlined the principles of and mechanisms for compliance monitoring and reporting during project implementation. The intention was to rely on the voluntary cooperation of proponents to provide information to the EA Branch to confirm terms and conditions were met. This proposal has not been finalized. The *Interim Guidelines on Environmental Assessment Planning and Approvals* issued in July, 1989, do not include any reference to compliance reporting or monitoring.

The EA Act should be amended to require the proponent to provide the necessary reporting, documentation and verification to demonstrate compliance. For administrative support, the Ministry should develop the appropriate reporting, review and enforcement mechanisms and procedures to administer a comprehensive compliance monitoring program.

For the purpose of compliance monitoring and for management of project implementation there is a need for consolidation of conditions and commitments into one easily referenced format. A provision should be added to the Act to make the proponent responsible for complying with commitments and statements of intent contained in the EA document that relate to the implementation of the undertaking. This should apply to individual EAs and to compliance orders set out in chapter 6.

The completion of any obligations should be reported along with proper verification from the responsible agency. A final report on compliance would be contained in the Project Completion Notice to advise that project implementation had been completed in accordance with all commitments, terms and conditions of approval.

RECOMMENDATION 5.1

THAT THE EA ACT BE AMENDED TO REQUIRE COMPLIANCE REPORTING BY PROPONENTS WITH RESPECT TO EA COMMITMENTS, AND TERMS AND CONDITIONS RELATING TO INDIVIDUAL EA APPROVALS AND COMPLIANCE ORDERS.

RECOMMENDATION 5.2

THAT THE MINISTRY DEVELOP AND IMPLEMENT AN INTERNAL PROGRAM FOR COMPLIANCE MONITORING AND REPORTING FOR ALL FULL EA, AND COMPLIANCE ORDER PROJECTS. GUIDELINES BE PREPARED TO COVER ESSENTIAL DATA REQUIREMENTS AND RESPONSIBILITIES FOR REASONABLE REPORTING SCHEDULES, VERIFICATION, DOCUMENTATION, AND DURATION OF REPORTING PERIOD.

RECOMMENDATION 5.3

THAT THE EA ACT BE AMENDED TO REQUIRE FOR INDIVIDUAL EAs:

A) WITHIN THIRTY DAYS OF APPROVAL OF AN UNDERTAKING PROPONENTS TO SUBMIT TO THE MINISTRY A LISTING OF COMMITMENTS, TERMS AND CONDITIONS FOR WHICH COMPLIANCE MONITORING AND REPORTING WILL BE UNDERTAKEN AND REPORTED ON ANNUALLY.

B) PROPONENTS TO FILE A FINAL REPORT UPON PROJECT COMPLETION INDICATING THAT ALL THE COMMITMENTS AND TERMS AND CONDITIONS HAVE BEEN MET.

RECOMMENDATION 5.4

ALL DOCUMENTATION ON COMPLIANCE REPORTING TO BE PLACED ON THE PUBLIC RECORD FILE.

VERIFICATION

An effective compliance monitoring program must have means to verify that terms and conditions have been met and a system of enforcement with appropriate penalties for non-compliance. Currently, there is no procedure for compliance verification within the Ministry. Reliance is placed on the proponent to report compliance and the public to report on suspected violations.

To establish if compliance has been achieved some form of verification is necessary. There are three basic ways to obtain verification: supervision, surveillance, and auditing.

Supervision indicates a program carried out by the proponent to ensure that the project is built and operated according to environmental specifications including any terms and conditions of approval, for instance for the use of special construction and mitigation practices to minimize impacts. Field inspections would be required to monitor environmental conditions and usually to report on problems encountered and the action taken. The determination of what constitutes a "violation," and the nature of verification and reporting is left to the discretion of the proponent. For many commitments and conditions this form of verification may be appropriate.

Surveillance or inspection is undertaken by the regulatory agencies to ensure conditions of approval are implemented and all statutes and regulations are obeyed. A surveillance officer or inspector may undertake field inspections and liaise regularly with the proponent, government agencies and public to resolve problems. Reports filed by the officer would provide the necessary verification of compliance for those conditions and standards under their jurisdiction.

Auditing can examine the overall performance and effectiveness of environmental monitoring programs from both an administrative and operational perspective. Independent audits are useful in determining if adequate regulatory procedures are in place and effectively administered, whether verifiable reporting and documentation is available and if environmental benefits are evident as a result of compliance.

The recommended approach to verification and enforcement is a combination of supervision, surveillance and audit. To continue the principle that the proponent have as much involvement and responsibility as possible in the EA process the onus for verifying and reporting compliance should remain with them. The Ministry should coordinate and administer the program and be responsible for overall compliance and enforcement. Any violations or lack of compliance would be addressed by the enforcement program of the Ministry through the use of Section 39 of the EA Act which provides for prosecution and fines for violation of any term or condition of approval. Any ministry or agency that puts forward a condition should be responsible for verifying compliance. Requirements should incorporate clear objectives or measurable standards so that satisfactory performance can readily be identified. Once agencies are satisfied that conditions have been met they would provide the proponent with documentation to verify compliance.

Finally, to strengthen the effectiveness and integrity of monitoring programs the Ministry should audit one or two projects each year.

RECOMMENDATION 5.5

THAT MONITORING AND VERIFICATION OF COMPLIANCE WITH INDIVIDUAL CONDITIONS BE THE RESPONSIBILITY OF THE AGENCY THAT PROPOSED THE CONDITION. THE MINISTRY OF THE ENVIRONMENT BE RESPONSIBLE FOR OVERALL ADMINISTRATION AND ENFORCEMENT OF COMPLIANCE.

RECOMMENDATION 5.6

THAT PARTICULAR ATTENTION BE GIVEN DURING PLANNING AND CONSULTATION TO THE WORDING OF EA COMMITMENTS AND TO THE SUBSEQUENT DRAFTING OF TERMS AND CONDITIONS TO ENSURE THAT THEY ARE SUFFICIENTLY CLEAR AND SPECIFIC TO MAKE THE REQUIREMENTS UNDERSTANDABLE TO THE PROPONENT AND TO MAKE VERIFICATION OF COMPLIANCE PRACTICAL. WHEREVER APPROPRIATE THE TERM OR CONDITION SHOULD IDENTIFY THE AGENCY.

ENVIRONMENTAL EFFECTS MONITORING

Effects monitoring involves recording and comparing conditions before, during and after project implementation to determine the actual environmental effects and net changes caused by an undertaking. It depends on base-line data collection work prior to the start of construction as well as field data collection during and after construction, frequently extending beyond the period of compliance monitoring. Comparing this information to the effects predicted in the EA can establish the accuracy and relevance of predictions in the planning and decision-making process. Effects monitoring results can also be used to assess the effectiveness of mitigation measures and construction techniques to reduce impacts. It can provide information on the "net environmental effects" remaining after mitigation and restoration have been applied. Thus effects monitoring helps to evaluate critically and improve the effectiveness of assessment methods, impact prediction models, and construction mitigation techniques. Monitoring studies also advance the scientific knowledge of biophysical effects and interrelationships as well as our understanding of social impacts.

The technical benefits outlined above are all potentially advantageous to proponents. Furthermore, achieving a better understanding of effects can help to reduce controversy and build public confidence in a proponent's predictions and mitigation proposals. Finally, the citing of monitoring study results as evidence at hearings could reduce the need for certain conditions of approval.

The EA Board has commented on the lack of information available on actual effects. The fault lies with both proponents and approval bodies. Once approval is obtained the incentives and justification for additional "EA" related work are diminished. The Ministry and EA Board have not made a practice of requiring factual evidence from similar case studies to substantiate assessment predictions, and proponents have not felt compelled to conduct monitoring studies. While it is hardly reasonable to make effects monitoring mandatory the quality of EA planning and decision-making could be improved if more effects monitoring was carried out and the results put to use.

RECOMMENDATION 5.7

THAT BY REGULATION ALL EA DOCUMENTS CONTAIN A LISTING OF COMMITMENTS, PROPOSED TERMS AND CONDITIONS, AND PROPOSED PLANS FOR MONITORING COMPLIANCE AND WHERE NECESSARY, FOR EFFECTS MONITORING.

RECOMMENDATION 5.8

A GUIDELINE SHOULD BE PREPARED TO DELINEATE MINISTRY INTERESTS IN THE AREA OF EFFECTS MONITORING.

RECOMMENDATION 5.9

THAT THE MINISTRY AND EA BOARD ENCOURAGE THE USE OF EFFECTS MONITORING STUDIES TO SUPPORT PLANNING PREDICTIONS AND ASSIST IN THE SCOPING OF ISSUES.

INFORMATION AND RESEARCH

To encourage and facilitate the integration of compliance monitoring and predictive methods used in EA studies, the Ministry should place more emphasis on empirical evidence to strengthen EA predictions, particularly in areas of recurring concern. Sharing and exchange of impact research, assessment methods and mitigation techniques should be supported and further research in EA through existing Ministry research programs.

The current proliferation of projects and development in certain areas has brought a growing concern over the issue of cumulative effects. The immediate effects of individual projects may seem insignificant, but when the effects of a number of undertakings are combined over time the results may have adverse environmental and social consequences. Under the present environmental planning and assessment process the implications of a project are evaluated and presented solely on the individual effects attributable to that project. Baseline environmental conditions are used that do not take account of impending changes caused by other projects in various stages of development. Review agencies tend to examine proposals on their individual merits without consideration of their cumulative effects on an area, resource or program. To support the principles of sustainable development and the protection in general of environmental quality the Ministry should require consideration of cumulative effects in EAs through its *Interim Guidelines on Environmental Assessment Planning and Approvals* and Guidelines for Government Review. The Ministry should promote the development of information and research on cumulative environmental effects and assessment methods.

RECOMMENDATION 5.10

THAT THE MINISTRY PROMOTE AND SUPPORT RESEARCH BY ACADEMIC INSTITUTIONS, ENVIRONMENTAL ORGANIZATIONS, PROPONENTS AND REVIEW AGENCIES TO ADVANCE UNDERSTANDING OF ENVIRONMENTAL EFFECTS AND INTER-RELATIONSHIPS AND SHARE INFORMATION.

RECOMMENDATION 5.11

THAT THE MINISTRY PROMOTE MONITORING AND RESEARCH TO SUPPORT CUMULATIVE EFFECTS ASSESSMENT.

CHAPTER 6

APPLICATION OF THE ENVIRONMENTAL ASSESSMENT ACT

INTRODUCTION

There are a number of ways in which Ontario's EA program may be applied to an undertaking.

Public sector projects may be subject to the EA Act through an individual EA or a class EA or be exempted. Projects under a class EA may be bumped up to individual EA status, when their environmental effects are seen to be more adverse than anticipated or there is some other controversial matter. Private sector projects are subject to the Act only when designated. Application issues may also be found where there is a possibility of interaction between the EA Act and another statute. Since administration of the program involves so many questions of application, the development of clearly defined procedures and of criteria to assist decision-making is a key issue.

This chapter deals with several areas of application of the EA Act where issues have arisen particularly over the need for improved procedures. Recommendations are made to allow a wider range of activities to be carried on prior to the approval of an undertaking, and for improvements to the provisions for exemption and designation and to the class EA process.

PUBLIC SECTOR - PROVINCIAL AND MUNICIPAL ISSUES

The EA Act applies to all public sector activities which encompass undertakings by Ontario Government ministries and agencies, municipalities, and conservation authorities, unless exempted. Ontario Regulation 205/87 as amended defines public bodies subject to the Act, and gives details on provisions for exemptions.

With respect to EAs on provincial undertakings, provision was originally made for the Ministry of Government Services (MGS) to assume EA responsibilities for specified ministries and undertakings. An issue has resulted from the matter that all provincial undertakings processed through MGS, a total of about seventy since 1976, have been exempted from the Act. This practice is now changing. A class EA is being developed by MGS to deal with the undertakings of the twelve Ministries concerned. Until the class EA is approved, however, no specific changes to Regulation 205/87 will occur to affect the exemption status of those Ministries.

Regulations to bring municipalities under the EA Act were approved in June 1980. Agreement was reached for permanent exemptions to be given to minor undertakings (such as waste transfer stations) and those having insignificant effects on the environment. Class EAs were prepared for recurring municipal projects which had a

limited and predictable range of effects (such as new sewage and water projects). Individual EAs are required for the more significant undertakings such as major waste management facilities.

Good planning practice encourages the acquisition of land for sites, corridors and buffer zones or other measures of protection, long before projects are scheduled for development. Subsection 5(1) of the EA Act currently prohibits the acquisition of sites or corridors and certain other activities necessary prior to construction. There are reasons for an expansion of the range of activities allowed prior to approval. Specifically, it is suggested, any activity without adverse environmental effect could be included, such as engineering, design and survey work, materials purchase and acquisition of property. At all times the proponent would be "at risk," and the fact that costs have been incurred cannot be allowed to influence the approval decision.

RECOMMENDATION 6.1

AMEND SUBSECTIONS 5(2) AND 6(2) OF THE EA ACT TO SPECIFY THE RANGE OF ACTIVITIES PERMITTED PRIOR TO APPROVAL OF AN UNDERTAKING, SUCH AS PROPERTY OPTIONS AND ACQUISITIONS, CORRIDOR AND ROUTE PROTECTION, PRE-DESIGN ENGINEERING, SURVEY WORK, AND THE PURCHASE OF MATERIALS.

PUBLIC SECTOR EXEMPTION PROVISION

All public sector undertakings are subject to the EA Act unless exempted under section 29. Exemptions may be granted "in the public interest having regard to the purpose of the Act and weighing the same against the injury, damage or interference that may be caused to any person or property by the application of this Act...".

A Ministry document *Project Screening and Applications for Exemption Orders under section 29 of the EA Act* is a guide to how and why the Act has been applied to public sector projects, and provides project screening criteria for evaluating exemption requests. The three project screening criteria presented in the Ministry guideline document are: absence of environmental significance, emergency situation and overwhelming public interest. More detailed criteria are necessary.

On receiving a request for an exemption the Minister directs it to Ministry staff for review; review team members may also assist. The Environmental Assessment Advisory Committee (EAAC) is informed of the request and may be asked by the Minister to advise on the decision.

Many exemptions were granted in the early years of operation of the Act while waiting the completion and use of class EAs. More recently the number of exemptions granted have ranged between 20 and 30 annually. Since 1983, out of more than 180 exemption requests about 150 have been granted and seven rejected, the remainder

being still in process. The preponderance of exemptions granted has led to the opinion that the provision may have been misused.

The efficiency and certainty of exemption procedures are also in question. A standard format is needed for exemption requests. The duration of the formal process averages about six months and has ranged, for individual requests, between a few days in emergency situations to 27 months. Time limits should be established for the exemption process.

Public notice and opportunity for consultation over exemption requests occurs only when the EAAC is asked to conduct an open type public review and advise the Minister. Since 1986 less than ten percent of requests have been referred to the EAAC for advice.

Exemption orders often include detailed conditions intended to ensure that environmental concerns would be addressed in the course of planning and implementing the undertaking. Concerns exist over whether this practice can be effective unless accompanied by monitoring to confirm conditions are met. The development of another instrument such as a "Compliance Order" supported by a monitoring program would overcome this deficiency.

RECOMMENDATION 6.2

BY REGULATION PROVIDE FOR THE FOLLOWING EXEMPTION PROCEDURE:

A) PRIOR TO SUBMISSION OF THE FORMAL REQUEST, THE PROPONENT GIVE NOTICE TO THE MINISTRY AND THE PUBLIC AFFECTED WITH INFORMATION ON:

- **THE NATURE OF THE PROPOSED UNDERTAKING**
- **THE RATIONALE FOR THE PROPOSED EXEMPTION**
- **THE CONTACT PERSON FOR FURTHER INFORMATION ON THE REQUEST.**

B) PROVIDE THE PUBLIC WITH 30 DAYS TO RESPOND TO THE PROPONENT.

C) IN MAKING A FORMAL EXEMPTION REQUEST, THE PROPONENT TO PROVIDE THE FOLLOWING INFORMATION TO THE MINISTER IN A STANDARD FORMAT:

- **THE PURPOSE OF THE PROPOSED EXEMPTION;**
- **SPECIFIC DETAILS OF THE PROPOSED EXEMPTION REQUIREMENTS;**
- **A COPY OF THE INITIAL NOTICE;**
- **REASONS FOR SEEKING THE PROPOSED EXEMPTION;**
- **RESPONSE TO CRITERIA TO EVALUATE EXEMPTION REQUESTS;**
- **PRESENTATION OF RESPONSES FROM AND RESULTS OF CONSULTATION WITH THE PUBLIC.**

D) THE PROPOSED EXEMPTION REQUEST TO BE PUT ON PUBLIC RECORD.

E) THE MINISTER'S DECISIONS AND REASONS FOR THEM TO BE ON PUBLIC RECORD.

F) PROVIDE A SPECIAL PROCESS FOR EMERGENCY CASES.

RECOMMENDATION 6.3

A POLICY BE DEVELOPED TO TAKE THE FOLLOWING CRITERIA INTO ACCOUNT IN EVALUATING EXEMPTION REQUESTS:

A) EXTENT OF PUBLIC CONCERN.

B) POTENTIAL FOR SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS.

C) NEED FOR BROADER CONSIDERATION OF ALTERNATIVES.

D) CONSIDERATION OF THE PUBLIC INTEREST IN DEVELOPING THE PROJECT.

E) ADEQUACY OF OTHER APPLICABLE LEGISLATION TO DEAL WITH THE ISSUES OF CONCERN.

F) CONSIDERATIONS OF URGENCY.

RECOMMENDATION 6.4

THAT BY POLICY, THE MINISTER HAVE 120 DAYS FROM THE DATE OF SUBMISSION OF A REQUEST TO MAKE THE EXEMPTION DECISION; THE REASON FOR ANY EXTENSION BE GIVEN IN WRITING.

RECOMMENDATION 6.5

AMEND THE EA ACT TO AUTHORIZE THE ISSUE OF COMPLIANCE ORDERS TO ENSURE COMPLIANCE WITH CONDITIONS IMPOSED ON EXEMPTIONS.

PRIVATE SECTOR DESIGNATION PROVISION

The designation process, as currently employed to apply the Act to undertakings in the private sector, is criticized for its uncertainty, inefficiency and *ad hoc* nature. No criteria have been published by which to judge the suitability of "major" projects (EA Act clause 3(b)) for designation and to guide the public in requesting a project to be designated. Not including any preliminary period of negotiation between the party making the request and the proponent, the duration of the formal process has, in practice, varied between one to 28 months, averaging about six months. Over the course of the 1988-89 fiscal year, of 46 designation requests under review, eleven were denied, 2 were granted and 3 withdrawn. Since 1983 over 90 requests for designations have been made. Twelve projects have been designated. A guideline should be developed related to all aspects of designation requests.

RECOMMENDATION 6.6

THE MINISTRY ISSUE A GUIDELINE TO ESTABLISH A PROCEDURE FOR REQUESTING DESIGNATION OF A PRIVATE SECTOR UNDERTAKING UNDER THE EA ACT AND FOR REACHING A DECISION ON THE REQUEST. THE FOLLOWING MATTERS WOULD BE COVERED:

A) THE REQUEST FROM THE PARTY CONCERNED SHOULD CONTAIN INFORMATION ON:

- **THE PROJECT, ITS LOCATION AND THE PROBABLE PROPONENT;**
- **SPECIFIC REASONS FOR THE DESIGNATION REQUEST;**

- DESCRIPTION OF INVOLVEMENT WITH PROPONENT OR GOVERNMENT AGENCIES TO DATE;
- WHETHER THE REQUEST IS ON BEHALF OF AN INDIVIDUAL, A GROUP OR AN ORGANIZATION;
- MEANS OF CONTACT WITH THE PARTY MAKING THE REQUEST.

B) THE MINISTRY TO ACKNOWLEDGE THE REQUEST AND ADVISE THE PROPONENT AND AGENCIES AFFECTED.

C) THE MINISTER HAVE 120 DAYS FROM THE DATE OF SUBMISSION OF A REQUEST TO MAKE THE DESIGNATION DECISION; THE REASON FOR ANY EXTENSION TO BE GIVEN IN WRITING.

D) THE MINISTER'S DECISIONS AND REASONS FOR THEM TO BE ON PUBLIC RECORD.

E) THE FOLLOWING CRITERIA TO BE TAKEN INTO ACCOUNT IN EVALUATING, AND MAKING DECISIONS ON DESIGNATION REQUESTS:

a) EXTENT OF PUBLIC CONCERN

b) POTENTIAL FOR SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS

c) NEED FOR BROADER CONSIDERATION OF ALTERNATIVES

d) CONSIDERATION OF THE PUBLIC INTEREST IN DEVELOPING THE PROJECT

e) APPROPRIATE APPLICATION AND ADEQUACY OF OTHER LEGISLATION TO DEAL WITH THE ISSUES OF CONCERN.

f) CONSIDERATIONS OF URGENCY

g) FRIVOLOUS OR VEXATIOUS NATURE OF REQUEST OR THAT REQUEST WAS MADE FOR PURPOSE OF DELAY.

PRIVATE SECTOR APPLICATION

The application of EA to private sector activities using screening or listing devices as is currently the case, or is being considered in other provinces, indicates a need for Ontario to consider these devices in any expanded application of the Act that may be required to address the possible extension of the federal Environmental Assessment Review Process (EARP) process in Ontario. Application of the EA Act to the private sector has been accomplished for a limited number of types of undertakings where the private sector has been viewed as competing with the public sector. Two examples are waste management activities and non-utility power generation. Such similar undertakings should be subject to the same type of planning and approval process.

The Ministry should continue to develop a comprehensive strategy in the ongoing designation of the waste management sector. At present private energy from waste facilities handling more than 100 tonnes daily are designated under the Act. The Ministry has also announced its intentions to designate certain other waste manage-

ment activities. The designation of non-utility hydro-electric generators should occur in recognition of the Class EA currently under preparation for this type of activity. This last consideration derives from the need to have similar type undertakings addressed by similar approval processes.

RECOMMENDATION 6.7

THE MINISTRY CONTINUE TO DEVELOP A COMPREHENSIVE STRATEGY IN THE ONGOING DESIGNATION OF THE WASTE MANAGEMENT SECTOR.

RECOMMENDATION 6.8

THE MINISTRY DESIGNATE NON-UTILITY HYDRO-ELECTRIC GENERATORS TO PROVIDE FOR THE IMPLEMENTATION OF THE PARENT CLASS EA CURRENTLY BEING PREPARED FOR THESE ACTIVITIES.

THE CLASS ENVIRONMENTAL ASSESSMENT PROCESS

Chapter 1 has recorded the circumstances through which a review and approval process for an individual environmental assessment was incorporated in the EA Act, even though it would not appear to be a practical means of assessing the many public sector undertakings finally brought under the legislation.

The Ministry's response was to introduce the class EA process as a way to apply EA to projects that were similar in nature, occurred frequently, were limited in scale and had only minor and generally predictable effects on the environment. Examples are improvements to existing water works, sewage works and highways, which can be put into groups or classes with common characteristics, thus leading to the name of class EAs.

The class EA process starts with production of a parent class EA document describing a procedure for planning and implementing projects within the class. The document is approved through the individual EA review and approval process, as a result of which the procedure is authorized. Projects planned and implemented through an authorized class procedure then have approval status as if received through the individual EA review and approval procedure.

Within the class EA process, responsibilities are shared between the Ministry and proponent agencies. A representative of the proponent agencies prepares the parent class EA document, laying out the procedure to be authorized including ways of accounting for environmental concerns, provision for public involvement and the consideration of alternatives; the Ministry has responsibility for the review and approval of the document. Once the document has been approved, proponents are authorized to proceed with projects within the class, provided the approved procedures are followed.

Twenty class EAs are currently in use, applying to projects in the provincial and municipal sectors including conservation authorities. Documentation, time and expense are reduced for proponents in administering the class EA compared with the individual EA process.

Most authorized procedures incorporate a screening process which separates projects into categories reflecting environmental impact. Typically, but not invariably, projects in the first category have no significant environmental effect and may proceed without further involvement in the class EA procedure. Projects in the second category may likewise proceed, but only with the agreement of other agencies and parties specified in the parent class EA. For projects with greater impact, proponents have to complete a more detailed procedure which concludes with the filing of what is commonly referred to as an Environmental Study Report (ESR) or equivalent as specified in the parent class EA. The ESR explains such matters as the project purpose, environmental conditions in the project area, planning options, construction, operations and maintenance requirements and their environmental effects, and requirements for mitigation activities and monitoring.

CLASS EA ISSUES

Recurring criticisms of the use of class EAs are raised on the grounds that no explicit definition has been given of the types of projects suitable for assessment by the process. The understanding that class EA projects would be ones that occurred frequently, were of a limited scale, and had only limited and generally predictable effects on the environment, has not been enough to prevent some large projects with significant effects following through the process. A guideline should be issued with a more detailed statement of suitable project characteristics e.g.; recurring, similar in nature, limited in scale and having a predictable range of environmental effects, and responsive to standard mitigation measures. This would include recognition of those projects currently identified in approved Class EAs.

Despite the wide employment of class EAs, under the current legislation, their status is unclear. The EA Act makes no direct referral to the use of class EAs although reference is found to "class" in sections 40, 41 and 44 of the Act. Some have expressed doubts over whether these provisions are sufficient to validate the current use of the class EA procedures.

Parent class EAs now current show much inconsistency in their authorised procedures, both in content and terminology. It is intended to standardize the components of class EAs as far as possible. Flexibility must remain, however, to provide for class EAs that are not adaptable to standardization. A model class EA procedure should be developed as a guide to good practice and facilitate future development of class EAs.

Certain components for which legal authority could possibly be provided are reviewed below.

Although all Ministry class EA procedures contain provisions for public input, the procedures are inconsistent and uniform minimum requirements should be established. The same inconsistency applies in requirements for assessing or developing and reporting on environmental impacts, and in developing and reporting on mitigative measures and monitoring programs.

Another question concerns whether a proponent may begin to implement at least part of a project immediately following filing of the ESR, or have to delay all activity until the period for requesting bumping-up of a project under a class EA to an individual EA has passed.

The current practice of setting a date for the review of a parent class EA should become a legal requirement. Between reviews proponents may wish to amend an EA for the purpose of clarification, streamlining of administration or an extension of the class to projects not previously included. Current procedures for amending class EAs vary and allow only limited public involvement. Provisions are needed for the Minister to amend the parent class EA to address administrative changes.

Parent class EA documents are now approved for a specific proponent or for proponent groups. It would be useful to have a procedure for a class EA in use by one proponent group to be adopted by other groups undertaking similar projects. Currently, a regulation is required, as for example was employed to allow the Conservation Authorities Class EA for Water Management structures to be used by municipalities. A more convenient administrative process should be made available.

A bump-up provision allows the assessment requirement of a project to be raised from class EA to individual EA when the environmental effects are found to be more severe or unpredictable than anticipated and also where serious public concerns exist. Currently there are no criteria published for evaluating bump-up requests, no consistent statement of the process used and no time limits on the process. The result is delay and uncertainties of timing. Furthermore, the absence of criteria assists the use of the bump-up provision as a delaying mechanism, since a bump-up request can under some circumstances put on hold a proponent's progress through a class EA procedure.

The suggestion has been made that formal provision should be included for bump-down where, after a project has been bumped-up, fresh information or successful negotiations give reason for the project status to revert to that of a class EA. The proposal has not been followed up, however, since use of the provision would be very limited.

Another issue concerns the question of a proponent's responsibility after filing the ESR to delay implementation of a project until the period for public comment has expired. During this period a bump-up may be requested, and, as a result, implementation of the project could be premature.

RECOMMENDATION 6.9

AMEND THE EA ACT:

A) TO ESTABLISH THAT AN EA MAY RELATE TO A CLASS OF UNDERTAKINGS (CLASS EA).

B) TO ESTABLISH THAT APPROVAL GIVEN TO A PARENT CLASS EA MAY AUTHORIZE PROCEDURES TO BE FOLLOWED IN PLANNING AND CARRYING OUT UNDERTAKINGS THAT ARE PART OF THE CLASS, WHEREBY PROJECTS HAVING COMPLETED A CLASS EA AUTHORIZED PROCEDURE HAVE THE STATUS OF PROJECTS APPROVED UNDER THE EA ACT.

C) TO ESTABLISH THAT A CLASS MAY BE DEFINED WITH RESPECT TO ANY ATTRIBUTE, QUALITY, OR CHARACTERISTIC.

D) TO COVER MATTERS CONCERNING RETROACTIVITY AND RENEWAL OF EXISTING CLASS EA'S.

E) TO PROVIDE FOR A PROCEDURE TO ALLOW CLASS EA DOCUMENTS APPROVED FOR ONE GROUP OF PROPONENTS TO BE USED BY OTHER PROPONENTS CARRYING OUT PROJECTS OF A SIMILAR NATURE. DECISIONS REACHED WOULD BE SUBJECT TO THE APPROVAL OF THE MINISTER.

RECOMMENDATION 6.10

THE MINISTRY DEVELOP A POLICY TO DEFINE THE GENERAL CHARACTERISTICS OF PROJECTS THAT MAY BE INCLUDED UNDER CLASS EAs, AS:

- **RECURRING, SIMILAR IN NATURE, LIMITED IN SCALE AND HAVING ONLY A PREDICTABLE RANGE OF ENVIRONMENTAL EFFECTS, AND RESPONSIVE TO STANDARD MITIGATION MEASURES.**

RECOMMENDATION 6.11

BY REGULATION REQUIRE THAT:

A) CLASS EA AUTHORIZED PROCEDURES INCLUDE PROVISION FOR PUBLIC NOTICE AS FOLLOWS:

i) AT AN EARLY STAGE OF PROJECT PLANNING;

- **CONTENT OF FIRST NOTICE ISSUED TO PUBLIC/GOVERNMENT GROUPS;**
  - **DESCRIPTION OF PROJECT**
  - **METHOD OF CONSULTATION**
  - **STUDY AREA**
  - **DESCRIPTION OF CLASS EA PROCESS TO BE FOLLOWED**
  - **PROPONENT CONTACT PERSON**

ii) AT SUBMISSION OF THE ESR, FOLLOWING WHICH 30 DAYS WOULD BE ALLOWED FOR PUBLIC COMMENT AND OPPORTUNITY TO SUBMIT A BUMP-UP REQUEST.

- CONTENT OF SECOND NOTICE ISSUED TO PUBLIC/GOVERNMENT GROUPS:
  - AVAILABILITY OF ESR FOR REVIEW
  - DESCRIPTION OF PROPOSED PROJECT
  - PROCESS FOR REVIEW AND APPEAL

B) PARENT CLASS EAs STATE A TIME FOR SCHEDULING A REVIEW. THE PROPONENT TO CARRY OUT THE REVIEW AND SUBMIT A REPORT TO THE MINISTER FOR APPROVAL.

THE REVIEW TO GIVE INFORMATION ON:

- THE USE AND RESULTS OF SCREENING PROCEDURES;
- NUMBERS OF ESRs ISSUED;
- NUMBERS OF BUMP-UP REQUESTS AND THEIR RESOLUTION;
- ANY EXCEPTIONAL OCCURRENCES.

THE MINISTER MAY:

i) EXTEND USE OF THE PARENT CLASS EA FOR A FURTHER PERIOD IN ACCORDANCE WITH RECOMMENDATION 6.7(D);

ii) EXTEND USE OF THE PARENT CLASS EA WITH ADMINISTRATIVE OR MINOR TECHNICAL CHANGES IN ACCORDANCE WITH RECOMMENDATION 6.7(D);

iii) REQUIRE THAT THE PARENT CLASS EA BE AMENDED THROUGH AN INDIVIDUAL EA PROCESS CARRIED OUT BY THE PROPONENT. MATTERS ADDRESSED MAY BE SCOPED AT THE MINISTER'S DISCRETION.

C) THE MINISTER TO HAVE AUTHORITY TO REQUIRE A REVIEW OF THE CLASS EA PRIOR TO THE SCHEDULED TIME.

D) USE OF A STANDARD CLASS EA AMENDING PROCEDURE CONTAINING REQUIREMENTS FOR TIME LIMITS AND PUBLIC CONSULTATION TO ALLOW FOR ADMINISTRATIVE AND MINOR TECHNICAL CHANGES TO PARENT CLASS EAs BEFORE THE SCHEDULED REVIEW IS DUE.

THE PROPONENT FILES THE PARENT CLASS EA DOCUMENT WITH OR WITHOUT PROPOSED AMENDMENTS WITH THE MINISTER AND NOTIFIES GOVERNMENT AGENCIES AND THE PUBLIC THROUGH A NOTICE. THE PUBLIC WOULD HAVE 60 DAYS FOR REVIEW OF THE DOCUMENT AND TO EXPRESS CONCERNS DIRECTLY TO THE MINISTRY. WHERE, IN THE OPINION OF THE MINISTER, THE ISSUES ARE SATISFACTORILY RESOLVED, APPROVAL IS TO BE GIVEN WITHIN 120 DAYS; REASON TO BE GIVEN IN WRITING FOR ANY EXTENSION OF THE 120 DAY PERIOD.

IN MAKING A DECISION THE MINISTER MAY:

- GIVE APPROVAL
- NOT APPROVE
- REQUIRE AMENDMENTS BEFORE APPROVAL.

RECOMMENDATION 6.12

DEVELOP A MODEL PARENT CLASS EA DOCUMENT AS A GUIDELINE, TO INCLUDE PROVISION FOR:

- **A STANDARDIZED PUBLIC CONSULTATION PROCESS**
- **MANDATORY PUBLIC NOTICE WITH CONSULTATION METHODS**
  - **EARLY IN PROJECT PLANNING (FIRST NOTICE)**
  - **AT SUBMISSION OF ESR (SECOND NOTICE)**
- **PREPARATION AND CONTENT OF AN ESR REPORT OR ITS EQUIVALENT TO CONTAIN SIMILAR INFORMATION AS REQUIRED BY THE PARENT CLASS EA.**
- **CONSISTENT APPROACH TO PROJECT CLASSIFICATION (Individual EA, full ESR, Screened out subjected to conditions, Screened out)**
- **TIMING AND OTHER REQUIREMENTS FOR REVIEW OF PARENT CLASS EA**
- **ADDITIONAL CONTENT COVERING:**
  - **SCHEDULES (and time limits)**
  - **DOCUMENTATION (including maps)**
  - **METHODS OF ANALYSIS**
  - **MONITORING METHODS**
  - **DESCRIPTION OF PROBLEM OR OPPORTUNITY**
  - **SCREENING CRITERIA**
  - **MEANS BY WHICH SECTION 5(3) REQUIREMENTS SHOULD BE MET**
  - **REVIEW PERIOD**
  - **LODGING AND PUBLIC ACCESS TO THE DOCUMENTATION**
  - **PLANNING**
  - **IMPLEMENTATION**
  - **PROCESS FOR ADMINISTRATIVE OR MINOR TECHNICAL AMENDMENTS**
  - **BUMP-UP PROVISIONS**
  - **DESCRIPTION OF STANDARD MITIGATION METHODS**
  - **CONTENT OF NOTICES.**

RECOMMENDATION 6.13

AMEND THE EA ACT TO PROVIDE FOR BUMP-UP AND PROVIDE THE MINISTER WITH AUTHORITY TO AGREE TO REQUEST, DENY REQUEST, OR DENY REQUEST BUT IMPOSE CONDITIONS ON CLASS EA APPROVAL.

RECOMMENDATION 6.14

THE MINISTRY SHOULD PREPARE A GUIDELINE TO IMPROVE AND FACILITATE USE OF THE BUMP-UP PROVISION BY:

- **ESTABLISHING A PROCEDURE TO ACKNOWLEDGE RECEIPT OF BUMP-UP REQUEST AND ADVISE PROPONENT AND AFFECTED AGENCIES**
- **PROVIDING THAT THE REQUESTING PARTY GIVE REASONS FOR A BUMP-UP REQUEST**
- **ESTABLISHING THE FOLLOWING CRITERIA FOR ASSESSING BUMP-UP REQUESTS:**

  a) EXTENT OF PUBLIC CONCERN

  b) POTENTIAL FOR SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS

  c) NEED FOR BROADER CONSIDERATION OF ALTERNATIVES

  d) CONSIDERATION OF THE PUBLIC INTEREST IN DEVELOPING THE PROJECT

e) ADEQUACY OF PROVISIONS OF PARENT CLASS EA TO DEAL WITH PROJECT

f) CONSIDERATIONS OF URGENCY

g) FRIVOLOUS OR VEXATIOUS NATURE OF REQUEST OR THAT REQUEST WAS MADE FOR PURPOSE OF DELAY.

h) THE DEGREE TO WHICH PUBLIC CONSULTATION AND DISPUTE RESOLUTION HAVE TAKEN PLACE.

RECOMMENDATION 6.15

PARENT CLASS EAs TO STATE THE CONDITIONS UNDER WHICH THE PROPONENT MAY COMMENCE IMPLEMENTATION OF THE PROJECT FOLLOWING THE ISSUE OF AN ESR.

CHAPTER 7

BEYOND THE PRESENT PROGRAM

INTRODUCTION

The preceding chapters of this report have identified past and present benefits of and concerns with Ontario's EA program. These chapters also put forward numerous recommendations aimed at enhancing and streamlining the process. It is recognized that the proposed measures focus on a program that has changed greatly in its basic application. This discussion paper provides an opportunity to recognize broadened environmental awareness reflecting current social values.

The efforts of the World Commission on Environment and Development, the National Task Force on Environment and Economy, and the Ontario Round Table on Environment and Economy all reflect the increasing public interest, awareness and concern over the environment. Within Ontario, some have exerted pressure for broader application of the EA Act to the private sector as well as demanding recognition of environmental concerns in government policy and program development. Planning processes used for a number of government programs recognize the need for public consultation, environmental impact assessment, and examination of alternatives; these processes have also drawn considerable public interest.

This chapter explores interaction with other jurisdictions, the issues of private sector application and government program and policy development, and means of recognizing other planning processes that incorporate environmental considerations. This discussion considers the potential broadened application of the concept of environmental assessment. As the intent of this chapter is primarily to obtain public response, rather than to prescribe government intent with respect to the areas discussed, few definitive recommendations outlining intended direction are made.

RELATION TO OTHER JURISDICTIONS

At the national level, the Environmental Assessment and Review Process (EARP) is the means by which the concept of environmental assessment is applied to all departments, boards and agencies of the Government of Canada. The EARP was instituted as an administrative mechanism first by Cabinet decision in December, 1973, and given further legal authority with the issuance of the Environmental Assessment and Review Process Guidelines by Order-in-Council, in June, 1984.

At present the EARP Guidelines Order applies to any proposal:

a) that is to be undertaken directly by an initiating department;
b) that may have an environmental effect on an area of federal responsibility;
c) for which the Government of Canada makes a financial commitment; or

d) that is located on lands, including the offshore, that are administered by the Government of Canada.

A review of these criteria for application of EARP indicates considerable potential for application to many private and public sector areas of activity in Ontario. This appears to be particularly true when considering the extent of Federal financial support to many projects or far reaching legislation as the *Fisheries Act*.

In contrast to the general application criteria of the EARP, Ontario's EA process is applied to all public sector activities, unless specifically exempted. Specific private sector undertakings without any direct linkage with provincial programs or authorities may also be designated.

The EARP is a self-assessment process with an initial assessment phase and a public review phase. It addresses the potential environmental and directly related social effects of proposals and attempts to integrate relevant engineering, ecological, social, and economic consideration in project decision-making.

The self-assessment process begins with screening. Based on the assessment of potential environmental effects and public concerns, a decision is taken by the department that has the decision-making authority for the proposal to proceed with the proposal, abandon the proposal, subject the proposal to an Initial Environmental Evaluation (IEE), or to refer it to a public review by a panel. When an IEE results from the initial assessment, the initiating agency then decides to proceed with the proposal, abandon the proposal or refer the matter for review by a panel. When an initial assessment leads to a decision that the potential adverse environmental and directly related social effects are significant or that public concern warrants a public review, the minister of the initiating department refers the proposal to the Minister of the Environment for a public review by an independent environmental assessment panel, established by the Minister with a specific set of terms of reference to conduct a detailed examination and give public review of the proposal. The panel may make recommendations to the Minister of the Environment and the initiating Minister on the environmental acceptability of the proposal including recommendations on mitigating measures to alleviate environmental impacts.

In recent months, decisions by the Federal Court of Canada on the Rafferty - Alameda Dam project on the Souris River in Saskatchewan and on the Oldman River Dam project in Alberta have focused attention to the manner and interpretation of the application of the EARP process to proposals. The result of these recent decisions appears to influence the discretionary elements of EARP by the initiating department to the extent that the application of EARP, including the establishment of panels to conduct public hearings, could be required for all proposals which have impacts that are not

insignificant and not mitigable by known technology. These decisions appear to have given the EARP the status of legislation of general application.

The Canadian Environmental Assessment Act was recently tables in the House of Commons for further study by the Legislative Committee of the House. When proclaimed, the legislation will bring an end to the uncertainty created by the recent court decisions. As well the draft legislation places emphasis on the need to allow for the expression of public concern and to provide a full opportunity for the public to participate in the environmental assessment and review process. In addition, the independence of the review panel must be guaranteed.

The proposed changes to Ontario's EA Act will appropriately address public involvement in the planning and review process of EA but minimization of conflicts between the new federal EARP and provincial EA process is required. The Oldman River decision appears to give little weight to long-standing administrative arrangements involving Federal and provincial agencies that informally addressed the requirements of the EARP. Steps should be taken to overcome the potential liability of federal designation (application of EARP) to large projects in Ontario even if the provincial EA Act had been applied. This would avoid duplicate application of environmental assessment processes. A similar concern exists for projects that overlap the jurisdictions of Ontario and adjoining provinces.

As the Federal Court decisions also suggest the potential for increased application of the EARP to private sector initiatives in Ontario, this reinforces the need for development of Federal/Provincial joint mechanisms and protocols for application of EA. The preceding statement assumes that Ontario does not intend to abandon EA involvement to the federal government.

RECOMMENDATION 7.1

AMEND THE ACT TO ALLOW FOR FEDERAL/ONTARIO PANELS TO HOLD COMBINED HEARINGS ON ENVIRONMENTAL ASSESSMENT APPLICATIONS FOR PROJECTS WITH JOINT FEDERAL/PROVINCIAL INTEREST. SUCH FEDERAL/ONTARIO DECISIONS FOR AREAS OF FEDERAL JURISDICTION TO BE BINDING OR ADVISORY DEPENDING ON THE NATURE OF FEDERAL LEGISLATION, BUT BINDING WITH RESPECT TO AREAS OF ONTARIO JURISDICTION. A SIMILAR MECHANISM SHOULD BE PROVIDED FOR JOINT PROVINCIAL BOARDS.

GOVERNMENT POLICIES AND PROGRAMS

Another issue that extends beyond the present application and practise of the EA Act is that of explicit consideration of environmental concerns being taken into account in the development of applicable Cabinet approved policies and programs. The Brundtland Commission, the National Task Force, the Ontario Round Table, and public interest groups all appear to stress the importance of taking such consideration into

account. In addition, the attention of government to the concept of sustainable economic development must also reflect current social values as mirrored by the activities of the above-noted groups.

Environmental consideration to be taken into account can be described by the following key principles:

- public consultation;
- consideration of alternatives; and
- assessment of natural environmental impacts.

If policies and programs reflected this approach in their development, then individual EAs on projects stemming from such policies and programs could be considerably simplified through a scoping process linked to this approach.

The challenge of this issue is to respond with an approach that addresses these concerns yet recognizes the executive function in government and acknowledges individual ministerial autonomy within the structure of government. The approach taken must be practicable and not unduly onerous. It must also consider that the planning processes used by Ministries in policy development already recognize the need for public consultation, examination of alternatives and the impacts on the natural environment. The key is to ensure the consideration of these principles based on a framework that is consistent in its application.

Some options that could be used to address this issue are:

1) current discretionary approach allowing Ministries to determine to what extent they may wish to incorporate the key principles in their applicable policy and program development;

2) government policy requiring consideration of key principles in applicable policy and program development requiring Cabinet approval; and,

3) full application of the EA Act to applicable policy and program development.

The discretionary approach option, while maintaining the status quo, does not offer any government response to current social values pressing greater environmental consideration in decision-making.

On the other hand, full application of the EA Act to applicable policy and program development is not a viable option. There are several reasons for such a conclusion. The most significant concern would be that responsibility for government policy decisions would pass from the executive of government to either a Minister or non-elected board. If subsequent Cabinet review is involved, then an elaborate circuitous approach has been used for the same ultimate Cabinet decision on policy or program

development. This approach of full EA application would also result in a situation where the Minister of the Environment would be routinely approving policies and programs of other agencies, something not intended by our present process of government.

Future recognition of environmental considerations in policy and program development can be achieved separate from the EA Act. It must be recognized that Cabinet retains discretion to apply the Act to selected policies and programs. This then leads to the option involving a government policy approach requiring consideration of the key principles.

A framework for such an approach could be as follows:

- Cabinet to retain discretion to apply EA to selected policies or programs;
- government agencies to be responsible and accountable for incorporating environmental considerations as applicable in policy and program development;
- existing government policy development processes or amended processes would continue to be applied;
- the Cabinet approval process would be used to address environmental considerations; and,
- the approach should not affect policies already in place at the date of implementation of such a proposal.

The phrase, "applicable policies and programs" requires clarification. If it is accepted that current social values are pressing for sustainable economic development, achieved through recognition of environmental considerations, then the approach proposed above requires criteria to determine "applicable policies and programs" that might come under such an approach. Such criteria might include:

- physical impact;
- implications for natural resource allocation;
- significant adverse effects on the natural environmental; and
- use of provincial lands exceeding a defined area.

It is suggested that the government examine this approach specifically with respect to:

- further defining key principles to be addressed;
- developing criteria to be used in determining "applicable" policies and programs;
- establishing guidelines by which principles could be addressed; and
- developing a mechanism for implementation of the preferred approach.

PRIVATE SECTOR

The issues of private sector undertakings and EA must be examined when considering environmental assessment beyond the present program. In 1977 the private sector section of the EA Act came into force, allowing major private undertakings to be designated by regulation as subject to the Act. As a limited number of private sector undertakings have been designated up to this time, it is important to examine the rationale, issues, and options associated with further application of EA to the private sector.

A potentially major impact on this issue is the future direction of the federal EARP program. As discussed previously, recent federal Court decisions point to an increasing full application of EARP to private sector undertakings in Ontario.

Resource-based undertakings frequently impact upon native peoples, an area of joint provincial/federal responsibility, and broad application of the *Fisheries Act* could allow the EARP Guidelines Order to be brought to bear on any private-sector undertaking with a discharge to a water course. Federal financial commitments, in the form of direct or indirect assistance, could also have the potential of bringing private-sector undertakings under the federal EARP process. Given the probability of increased federal involvement in private-sector undertakings in Ontario, as has happened in other provinces, a decision must be made on the role that the Province of Ontario wishes to play in these types of situations. The application of EA to private sector activities using screening or listing devices as is currently the case, or is being considered in the other provinces, indicates a need for Ontario to consider these devices in any expanded application of the Act that may be required to address the possible extension of the EARP process in Ontario.

Other factors that could be used in determining application of EA to the private sector could include severity of environmental effects using the EA Act definition of environment and the suitability of other provincial legislation to address such effects. The existence of other legislation such as the Planning Act, Ontario Water Resources Act, Mining Act and Environmental Protection Act already subject private sector activities to a complex regulatory review process. This existing regulatory framework must be recognized in any further consideration of extending the application of the EA Act further to the private sector. Before any broader general application to additional private sector activities is considered, it is necessary that consultation with affected parties and a more comprehensive study of the benefits and disadvantages of such action be undertaken.

Once a sound rationale for decision-making on this matter has been developed, there are a number of other issues that would have to be addressed.

The present EA process and specific Act requirements appear to be more suited to the public sector rather than private sector. The requirements to describe "alternative to" and "rationale for" the undertaking may be difficult for the private sector to address in a meaningful fashion. The concept of venture capital undertakings and return on investment do not reflect public needs or benefits that the EA program could be viewed as addressing. Other issues that could be of concern to the private sector include lack of flexibility with respect to siting options, restrictions on confidentiality, and generally meeting the requirements of subsection 5(3) of the EA Act.

In considering possible application, the concept of definition by sector must be addressed. This approach has been used by the Ministry in the implementation of the Municipal Industrial Strategy for Abatement program through a sector designation with specific listing of designated companies. Since environmental assessment is in essence a planning approach, it would appear the private sector activities rather than specific companies would have to be designated. The spectrum of activities within any particular private sector is far ranging. A specific activity designation within that sector would be necessary.

One other major issue is the workings of the EA program. The government originally expressed the intention to gain experience with the EA program and streamline the review and approval process before applying it broadly to major private undertakings. Continued criticism of the process for its inefficiency and uncertainty as currently applied leaves doubt over its readiness for broader application. The improvements proposed in this discussion paper should make the EA review and approval process better adaptable for application to private undertakings. Experience in implementing the improved EA program would be required before general extension to the private sector is considered.

There are a number of possible options that could be used in delivering an enhanced EA application to the private sector. A self-assessment approach could be developed by an industry group or trade association. This would entail developing codes of practice, guidelines, review procedures, and public consultation conducted by the proponent. Formal Ministry involvement could be requested by the proponent.

Another option is to maintain the current approach with selective Cabinet designation but no staged sectoral involvement in EA.

A final option would involve designation based on a listing of private sector activities resulting in a number of activities being brought under the Act. The list for such designation would have to be developed and applied through a process with full involvement of all affected parties. Full immediate application of EA to all private sector undertakings could be viewed as another option but would clearly be unworkable.

Before any further consideration is given to extending the application of EA to the private sector, it is important that such application, or other alternatives, be explored in detail and be contingent upon resolution of the issues identifed above. A multi-stakeholder task force would seem the most likely approach to examine these issues further. It is certain that public concern will continue and that pressures from outside the province will focus attention on this matter. A comprehensive study of the following should be carried out:

- benefits and disadvantages of application of EA to the private sector,
- consultation with all affected parties;
- alternatives available to achieve government objectives in this area; and
- interrelationships with other government legislation, programs and policies.

As outlined in the introduction to this chapter, this section does not prescribe action but rather seeks response to the important issues of applying the Act to the private sector. Response to the suggestions, issues, options and concerns raised in this is essential in the further consideration of this matter.

INTEGRATION WITH OTHER PROGRAMS

A number of existing government programs require extensive planning, public consultation, consideration of alternatives, and assessment of environmental impacts. In essence, the key principles of sound environmental planning, or EA, are embodied in the development of these programs. Examples of such programs include:

- Remedial Action Plans
- Waste Management Master Plans
- Strategic Plan for Ontario Fisheries
- Pollution Control Plans
- Watershed Management Plans.

In most cases, these planning documents do not receive formal approval under any statutory provisions. Recommendations of these plans may be implemented through projects that may be subject to the EA Act.

An approach should be developed that allows recognition of the comprehensive plan development process in the preparation of any subsequent project EAs arising from implementation of such programs. It is essential to avoid duplication of process, where similar efforts are undertaken, even if one approach is regulated while the other is of a less formal nature.

Two options could be used to address this matter. One is the recognition of the plan development process in the ADD with appropriate resultant scoping. The second to is

to provide the Minister authority to scope or specify matters to be dealt with in an EA, in recognition of earlier planning and decision-making processes.

The first approach of using the ADD likely provides the most flexibility and allows some room for judgement to be passed on the quality of the plan development work. This becomes important given that plans developed in this fashion are not subject to any formal approval mechanism. With this approach, authority for scoping rests entirely with the EA Board.

The approach of providing for Ministerial scoping of the contents of an EA is potentially a significant shift away from the requirements of the present process. Criteria would be required to assist the Minister's decision-making for effective scoping. In some cases, matters could be excluded if addressed by defined provincial policy or by policies developed in accordance with the discussion presented earlier in this chapter.

CHAPTER 8

CONCLUSIONS

The basic approach of environmental assessment as practised in Ontario is sound but refinement of the EA program is required to provide status to procedures and to maximize the efficiency and effectiveness of program delivery. It is expected that a reasonable planning, review and decision-making process will result in solutions to problems or opportunities of proponents which are accepted by all parties in the circumstances. The EA program will continue to ensure that environmental considerations are taken into account prior to decisions to proceed. The provision of a more clearly articulated process, of practical structural and institutional improvements and of clear criteria to assist in decision-making will facilitate the delivery of the more streamlined program. Recommendations are included to clarify the status of class EAs, and to provide for compliance orders. Improvements to coordinate and to establish control points and decision steps in the sequence of planning, consultation and review activities together with the clarification, or establishment, of decision-making criteria for the various steps in the EA process are also recommended.

As the EA program has evolved over the last fourteen years, refinement in the techniques of assessment have occurred while the expectations of all participants have increased. The practice of EA has expanded beyond the process of collecting data, and providing qualitative documentation in carrying out a simple assessment to a process which is becoming more involved with the techniques of effects prediction and analysis, monitoring, analyzing risk and carrying out public consultation. In Ontario the extension of the application of EA from a project by project basis to reviewing the development of plans, such as, the Ontario Hydro Demand/Supply Plan, suggests a trend to broader application in the future.

This discussion paper focuses attention on the structural and institutional changes that are necessary to provide greater effectiveness and efficiency in the delivery of the EA program. Recommendations which deal with the streamlining of procedures and the establishment of time frames and decision-making criteria are provided to assist the Ministry of the Environment and the EA Board in carrying out their duties.

In order to facilitate participation in the EA process, improvements are recommended to clarify the roles, responsibilities or requirements of participants. The involvement and integration of the many potential parties in the preparation of an EA document is also addressed. A major innovation contained within the recommendations relates to the statutory change which requires the proponent to develop a public consultation plan and public involvement process. It is recommended that the EA Act formally recognize the planning and consultation stage of EA document preparation. The

recommendations provide for the commencement of the formal EA process with the publishing of a notice by the proponent to parties in the study area when the proponent has defined the purpose of the undertaking. This will ensure earlier involvement of interested parties in the development and planning of the EA document. Recognition is given to the Assessment Design Document (ADD), formal public notice and the possibility of scoping, including procedures before the Board. In future, the Board will also be able to consider requests for funding of participants during the PAC stage if requested by the proponent. Amendments to the statute will provide the authority for the EA Board to carry out these additional duties.

The formal requirement for the consultation plan to be incorporated into the ADD and implemented while the EA document is under development should provide earlier opportunities for the public and review agencies to come together with the proponent and the Ministry to integrate their concerns, suggestions and interests. The proponent will be accountable for describing the methods and the results of the public consultation as part of the EA to be taken into account as part of the decision on acceptance. Responsibility for actions taken in the EA program delivery is assured by specifically defining the role for the EA Coordinator and for providing the Director of the EA Branch with the authority to make decisions on acceptance or the refusal of acceptance of the EA document.

Attention has been directed toward the implementing of decisions arising from the application of the EA Act by recommending that the statute provide for compliance monitoring and reporting.

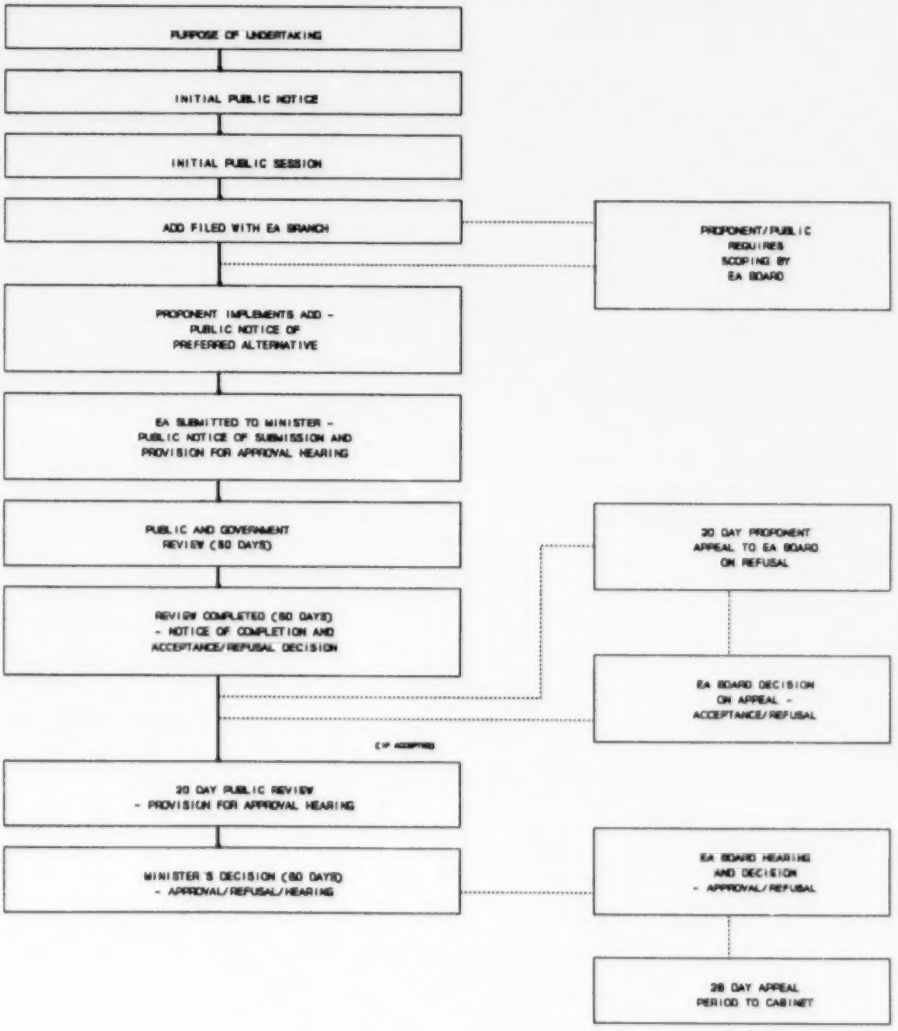
Necessary and supportive regulations, policies and guidelines will also be developed under the revised statutory frame work. When the legislated changes are adopted, the Ministry of the Environment will have to develop new regulations, policies and guidelines to enable successful implementation.

To prepare for involvement in the future with complex multi-jurisdictional projects the paper recommends that the Act provide a mechanism for joint hearings with Federal, and provincial boards. Options for further discussion are provided for dealing with government policies and programs, possible extension of the Act's application to the private sector and integrating the key principles of environmental planning with other planning programs.

After all interested parties including the public have had the opportunity to review the recommendations contained in this report and to make their views known to the Environmental Assessment Advisory Committee, it is expected that the Committee will make a report to the Minister. After consideration of all recommendations, appropriate statutory amendments will be introduced to the Legislative Assembly and the necessary regulations, policies and guidelines will be developed in consultation with all interested parties.

APPENDIX A

PROPOSED ENVIRONMENTAL ASSESSMENT PROCESS


PURPOSE OF UNDERTAKING
INITIAL PUBLIC NOTICE
INITIAL PUBLIC SESSION
ADD FILED WITH EA BRANCH
PROPONENT/PUBLIC REQUIRES SCOPING BY EA BOARD
PROPONENT IMPLEMENTS ADD - PUBLIC NOTICE OF PREFERRED ALTERNATIVE
EA SUBMITTED TO MINISTER - PUBLIC NOTICE OF SUBMISSION AND PROVISION FOR APPROVAL HEARING
PUBLIC AND GOVERNMENT REVIEW (60 DAYS)
20 DAY PROPONENT APPEAL TO EA BOARD ON REFUSAL
REVIEW COMPLETED (60 DAYS) - NOTICE OF COMPLETION AND ACCEPTANCE/REFUSAL DECISION
EA BOARD DECISION ON APPEAL - ACCEPTANCE/REFUSAL
20 DAY PUBLIC REVIEW - PROVISION FOR APPROVAL HEARING
MINISTER'S DECISION (60 DAYS) - APPROVAL/REFUSAL/HEARING
EA BOARD HEARING AND DECISION - APPROVAL/REFUSAL
28 DAY APPEAL PERIOD TO CABINET

GLOSSARY

The following definitions of commonly used terms and acronyms are provided as an aid to the reading and understanding of this paper. These terms are associated with the implementation of the EA Act and the practice of environmental assessment in Ontario. Terms which are used in a special context within this paper are noted with an asterisk (*).

*Acceptance/Refusal Decision	The decision to accept or refuse an EA.
Alternative Methods	Functionally or technically similar ways of carrying out the undertaking.
Alternatives To	Functionally different ways of addressing the purpose of the undertaking.
*Amendment to an EA	A minor change to a submitted EA document initiated by the proponent upon request and agreement of the Director prior to issuance of the Review.
*Amendment to Approval	A change to an EA after an approval decision subject to review and approval of the body responsible for the original approval.
Approval	The decision by the Minister or the Board to approve an undertaking is made after the acceptance of the EA. This decision means that a proponent may proceed with the undertaking as specified in the EA, subject to any terms and conditions of the approval.
*Assessment Design Document (ADD)	A document prepared by the proponent at the start of the planning and consultation phase and reviewed with the public. The document sets out the basic approach to the EA including information about the purpose of the undertaking, the proposed study area, listing and general description of "alternatives to" and proposed alternative methods being considered, a consultation plan, preliminary listing of issues/concerns, and preliminary listing of studies to be carried out and the frame work to be used in preparing the

	EA. The final ADD is filed with the Ministry and may be referred to a scoping session convened by the EA Board to approve its content.
Consolidated Hearings Act, 1981 (CH Act)	This Act is intended to streamline the approvals process for undertakings which may require a hearing under more than one statute. For a complete listing of the Acts to which the CH Act applies, refer to the Schedule in the CH Act.
Bump-Up	A provision in the class EA process which enables the environmental assessment requirement to be raised or bumped-up from class EA to individual EA status when there are significant adverse environmental effects or where serious public concern exists.
Class EA	A pre-approved planning and implementation process for a group or class of projects which have some or all of the following characteristics: recurring, similar in nature, limited in scale, a predictable range of environmental effects and responsive to standard mitigation measures.
Designation	A regulation under section 40 of the EA Act applying the provisions of the Act to any specified proposal, plan, program, major commercial business, enterprise or activity.
Director	The Director of the Environmental Assessment Branch.
Environmental Assessment Advisory Committee (EAAC)	A committee established by the Minister of the Environment to provide advice to the government through the Minister on requests for exemption, designation or bump-up of undertakings under the EA Act or other EA related matters referred to the Committee by the Minister.

Environment	The definition of "environment" in the Act, includes the physical, natural, social, economic, and cultural factors, and their interrelationships. Clause 1(c) of the EA Act defines "environment" as follows: (i) air, land or water, (ii) plant and animal life, including man, (iii) the social, economic and cultural conditions that influence the life of man or a community, (iv) any building, structure, machine or other device or thing made by man, (v) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of man, or (vi) any part or combination of the foregoing and the interrelationships between any two or more of them, in or of Ontario.
EA Act	Environmental Assessment Act.
EP Act	Environmental Protection Act.
EA Coordinator	A staff member of the Environmental Assessment Branch of the MOE.
EA Document	Refers to the document which describes the carrying out of that process resulting in the selection of the preferred alternative and addresses the content requirements of subsection 5(3), the EA Act.
Environmental Assessment Board (EA Board, the Board)	The Environmental Assessment Board is a body appointed by Order-in-Council, which has the authority to conduct hearings when required by the Minister of the Environment.

Environmental Study Report (ESR)	The documentation prepared and submitted by the proponent for an undertaking under the provisions of a parent class EA.
Exemption	A regulation removing the need for a proponent to carry out specific requirements of the EA Act. It may exempt a proponent or an undertaking entirely from the Act and may be granted with or without terms and conditions.
Individual EA	An environmental assessment for an undertaking which is proceeding under the full requirements of the Act including planning and consultation, submission of an EA document, review and approval and monitoring.
*Initial Public Meeting	The first mandatory requirement in the PAC phase for the public to meet with the proponent to obtain information about the study and provide input.
Joint Board	A body established under the authority of the CH Act. It comprises one or more members of either or both the Environmental Assessment Board and the Ontario Municipal Board.
*Parent Class EA Document	An individual EA document setting out a procedure for the planning and implementing of undertakings within a specified class and authorized through a full EA review and approval process. All new projects planned and implemented according the parent class EA procedures have EA approved status under the Act.
*Planning and Consultation (PAC)	First stage of the EA process prior to formal submission of an EA document where the proponent carries out studies and public consultation required to conduct an assessment of alternatives, select a preferred alternative and prepare an EA document.

Proponent	A proponent is the person, agency or government ministry who carries out or proposes to carry out an undertaking, or is the owner or person having charge, management or control of an undertaking.
Public Record	It is an ongoing record of each EA and consists of the EA, the review of the EA, any written submissions by the public, any decisions by either the Environmental Assessment Board or the Joint Board, or the Minister together with written reasons for them and any notices/orders made by the Minister relating to the EA Act.
*Review	The Review is prepared by the EA Coordinator and reflects the comments and opinions of the government reviewers, the public and the EA Branch and presents a Ministry position on the acceptance or refusal of the EA with supporting reasons and presents issues including proposed terms and conditions regarding approval of the undertaking.
Reviewers	Reviewers, or members of the government review team, are staff of various ministries and agencies who contribute to the preparation of the review of an EA.
*Scoping	Process for the purpose of setting the boundaries and focusing the EA process.

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